BEFORE THE MISSOURI GAMING COMMISSION

Meeting

March 1, 2017

10:00 a.m.

Jefferson City, Missouri

BEFORE: Herbert M. Kohn, Chairman
       Brian Jamison, Vice Chairman
       Larry D. Hale, Commissioner
       Thomas Neer, Commissioner
       Richard F. Lombardo, Commissioner

Reported by:

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AGENDA

I. Call to Order 4:6

II. Consideration of Minutes 4:20
   A. January 11, 2017

III. Consideration of Hearing Officer Recommendations
   B. Thressia Leahy
      1. Resolution No. 17-011 5:22
   C. Michelle McClendon
      1. Resolution No. 17-012 10:11
   D. Jose Hernandez
      1. Resolution No. 17-013 13:18
   E. Gordon Thomas
      1. Resolution No. 17-014 15:20

IV. Consideration of Disciplinary Actions
    F. HGI-Mark Twain, LLC
       1. DC-17-02819:23

V. Consideration of Settlement Agreement
   G. Gerard Smriga
      1. Resolution No. 17-015 28:2

VI. Consideration of Ratification of Chairman's Extension of Supplier's License
    H. Landry Holdings, LLC d/b/a Casino Tech
       1. Resolution No. 17-016 34:15

VII. Consideration of Level I/Key Applicants
     I. Resolution No. 17-017 36:15

VII. Consideration of Rules and Regulations
     J. Final Orders of Rulemaking 38:6
        1. 11 CSR 45-5.183 - Table Game and Poker Cards
        2. 11 CSR 45-5.184 - Table Game Cards - Receipt, Storage, Inspections, and Removal from Use
3. 11 CSR 45-9.104 - Minimum Internal Control Standards (MICS) -

Chapter D

VIII. Motion for Closed Meeting under Sections 313.847, RSMo., Investigatory, Proprietary and Application Records and 610.021(1), RSMo, Legal Actions, (3) & (13) Personnel and (14) Records Protected from Disclosure by Law 48:7
(Start time: 10:00 a.m.)

PROCEEDINGS

CHAIRMAN KOHN: Good morning everybody. On behalf of the Commission and the staff, thank you for being here.

We'll call the March 1, 2017 Missouri Gaming Commission meeting to order.

Angie, please call the roll.

MS. FRANKS: Commissioner Lombardo.

COMMISSIONER LOMBARDO: Present.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Present.

MS. FRANKS: Commissioner Hale.

COMMISSIONER HALE: Present.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Present.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Present.

We have a quorum, ready to begin.
The first item of business is Consideration of Minutes from the meeting of January 11. Is there a motion to approve those minutes?

COMMISSIONER HALE: So moved.

COMMISSIONER LOMBARDO: Second.

CHAIRMAN KOHN: Angie, please call the roll.

MS. FRANKS: Commissioner Lombardo.

COMMISSIONER LOMBARDO: Approve.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Hale.

COMMISSIONER HALE: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

MS. FRANKS: By your vote you've adopted the minutes of the January 11, 2017 meeting.

CHAIRMAN KOHN: Mr. Seibert, I think we're ready to begin.

EXECUTIVE DIRECTOR SEIBERT: Yes, sir.

The first order of business, Mr. Chair, is Consideration of Hearing Officer Recommendations, and the presenter will be Mr. Chas Steib.

MR. STEIB: Good morning.
CHAIRMAN/COMMISSIONERS: Good morning.

MR. STEIB: May it please the Commission.

The first item on the agenda at this point is the consideration of Thressia Leahy, Resolution No. 17-011. This is a failure to disclose matter.

The facts in this matter are as follows: On July 7th, 2016 the applicant made an application for a Level II occupational license.

That application at Question No. 14B asks, and I quote, have you ever been arrested, detained, charged, indicted, convicted, pled guilty or nolo contendere or forfeited bail concerning any crime or offense in any Federal, State or local jurisdiction, including any findings or pleas in an SIS suspended imposition of sentence?

Page 18 of the application is regarding civil, criminal and investigatory matters, and states -- the next question asks about any arrests, charges, offenses you have committed, and therein are definitions.

The significant and salient definitions in this matter are B, charge, means any indictment, complaint, information, summons, ticket or other notice or leads Commission of any offense.

And offense is defined as all felonies,
crimes, misdemeanors, municipal ordinance violations, court marshals.

Regarding that question the applicant answered no, and she was granted a temporary license on July 27th.

In response to the investigation, which is always and customarily done by the Highway Patrol, it was learned that the applicant received a charge of Class A misdemeanor theft on July 6th, 2016, the day before her application.

She stipulated in that court appearance that she was charged with a Class A misdemeanor. She admitted on September 12, 2016 that she did receive the court summons.

The applicant in completing the application admitted that she completely understood all of the definitions in the application. She did admit in the hearing that she, in fact, was charged with shoplifting and admitted that she did not tell Bradley Baker, the investigator, about this charge for shoplifting.

The issue that came to the floor on this matter by the applicant and her husband who was representing her was that she had never been arrested and hence had no duty to disclose that in the application.
That argument and that position, however, misses the mark. It is not a question and not an issue of whether she was arrested. She did receive a summons which she did not report, she was charged which she did not report and she did appear in court regarding that Class A misdemeanor of shoplifting.

Based on the record and based on the testimony it is the hearing officer's recommendation that she did not meet her burden of proof in this matter to show clearly and convincingly that she should be granted a license and that license should be denied to this applicant.

CHAIRMAN KOHN: You said a few minutes ago that she was represented by her husband. As I understand it English is not her first language. Is that right?

MR. STEIB: That's true, and her husband is not an attorney, and that issue came up at the hearing. And so I believe that she completely understood the language at the hearing. The record reflects that she said she did accurately understand all of the definitions in the application.

So their position was not so much a language issue, as he believed that she was not arrested and hence she did not have to report that.
CHAIRMAN KOHN: So you don't believe that the language factor was a factor in whether or not she correctly or honestly answered the question?

MR. STEIB: Based on her testimony at the hearing I do not believe that the English language was a problem in this matter.

CHAIRMAN KOHN: Any other questions of Mr. Steib?

COMMISSIONER HALE: No.

COMMISSIONER LOMBARDO: No.

COMMISSIONER NEER: I believe in the testimony she indicated that she did understand.

COMMISSIONER LOMBARDO: Right.

COMMISSIONER NEER: Is that correct?

COMMISSIONER LOMBARDO: That's what I read.

MR. STEIB: That appears in the transcript.

CHAIRMAN KOHN: Is Ms. Leahy here or her husband or anyone representing her?

Okay. Is there a motion with respect to Resolution 17-011?

COMMISSIONER JAMISON: I move for approval of 17-011.

COMMISSIONER NEER: Second

CHAIRMAN KOHN: Discussion on the motion?
Angie.

MS. FRANKS: Commissioner Lombardo.

COMMISSIONER LOMBARDO: Approve.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Hale.

COMMISSIONER HALE: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

MS. FRANKS: By your vote you've adopted Resolution No. 17-011.

CHAIRMAN KOHN: Okay. Mr. Steib, I believe you're still up.

MR. STEIB: Thank you, sir.

The next item is Case No. DC-16-197, Michelle McClendon.

On October 8th, 2015 the applicant executed an applicant interview form in which she failed to disclose an arrest on December 6th, 1992 in Ferguson, Missouri by the police department for failure to appear, an arrest on August 13th, 1994 by the University City Police Department for speeding, an arrest on December 15th, 1999 by the Edmundson, Missouri Police...
Department for felony stealing motor vehicle, and a
Federal fugitive warrant on June 16, 2005 by the
St. Charles, Missouri Police Department.

All of these items were introduced without
objection into the record, along with a certified mail
return receipt that the applicant did receive notice of
the December 20th hearing here in Jefferson City.

Although the room and the hauls were called
two times the applicant failed to appear. Based on
the evidence adduced at the hearing by counsel for the
Gaming Commission and the applicant's failure to appear,
it is the recommendation of the hearing officer that
since the applicant did not appear, did not meet her
burden of proof to show by clear and convincing evidence
that she should be granted a Level II occupational
gaming license, that same should be denied.

CHAIRMAN KOHN: Any questions of Mr. Steib on
this matter?

Is Ms. McClendon here or anyone representing
her?

Is there a motion with respect to
Resolution 17-012?

COMMISSIONER LOMBARDO: Motion to approve.

COMMISSIONER HALE: Second.

CHAIRMAN KOHN: Discussion on the motion?
Angie.

MS. FRANKS: Commissioner Lombardo.

COMMISSIONER LOMBARDO: Approve.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Hale.

COMMISSIONER HALE: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

MS. FRANKS: By your vote you've adopted Resolution No. 17-012.

COMMISSIONER JAMISON: I have a procedural question.

If someone requests a hearing and then doesn't appear for that hearing, do we still have to go through the process of conducting the hearing and then acting on that hearing when the person obviously didn't want the hearing at some point, made the decision not to want the hearing?

MR. GREWACH: We do.

Like default in a civil case, you would still have to put on prima facia evidence of the fact that the discipline is warranted by the evidence.
There is a provision of the rule that says if they fail to appear, then all of the allegations in the Preliminary Order are deemed admitted, but we do have to go ahead and put on enough evidence to support the discipline, and, in fact, it has to be presented to the Commission because the discipline is not final at that point until the Commission rules on the resolution.

COMMISSIONER JAMISON: Okay.

CHAIRMAN KOHN: Okay.

COMMISSIONER JAMISON: Thanks.

MR. STEIB: For the record, at these hearings I always make sure that the record is complete and permit the counsel for the Gaming Commission to put on the evidence, which in this particular situation is the criminal past.

So these hearings where there is a default are truncated, but nonetheless I want to make sure that there's a record made that -- the purpose for which the record has been made.

COMMISSIONER JAMISON: I figured that was the case. I just wanted to check.

CHAIRMAN KOHN: You're still up with the Hernandez matter.

MR. STEIB: The next item on the agenda is Case No. DC-16-198, Jose Hernandez.
On September 14, 2016 the applicant completed the interview form and related an arrest in Houston, Texas in 2003 for assault, an arrest in 2008 by Las Vegas, Nevada Police Department for battery, an arrest in 2009 by the Las Vegas, Nevada Police Department for driving while intoxicated, and an arrest in 2010 by the Las Vegas, Nevada Police Department, driving while intoxicated. All of these records were admitted without objection.

The applicant in this situation appeared via video. He was afforded an opportunity to cross-examine the witnesses and present his case.

His case can be summarized as this: Under oath he testified that he did not think those things would show up because his background record would not go back that far.

Based on the evidence which was adduced, including the testimony of the applicant, it is the hearing officer's recommendation that the applicant did not meet his burden of proof to show clearly and convincingly that he should be granted an occupational gaming license and that that should be denied.

CHAIRMAN KOHN: Any questions of Mr. Steib?

COMMISSIONER LOMBARDO: So he did not deny the charges; he just said he didn't think that you would
find them?

MR. STEIB: He did not think the Missouri Highway Patrol would find them obviously.

COMMISSIONER LOMBARDO: All right. Okay.

CHAIRMAN Kohn: Is Mr. Hernandez present or anyone representing him?

Okay. Is there a motion with respect to Resolution 17-013?

COMMISSIONER JAMISON: Move for approval.

COMMISSIONER NEER: Second.

CHAIRMAN Kohn: Discussion on the motion?

Angie.

MS. FRANKS: Commissioner Lombardo.

COMMISSIONER LOMBARDO: Approve.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Hale.

COMMISSIONER HALE: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN Kohn: Approve.

MS. FRANKS: By your voted you've adopted Resolution No. 17-013.

CHAIRMAN Kohn: Mr. Steib, Mr. Thomas.
MR. STEIB: Gordon Thomas is Case No. DC-16-199. Mr. Thomas completed an application and a DOLA, Disposition of Occupational License, was dated October 6th.

At this hearing the applicant did not appear. However, he did disclose on September 9th, 2016 the following: a 2003 driving while intoxicated, no insurance, no operator's license in Junction City, Kansas; a 1991 driving while intoxicated, no insurance, no operator's license, Junction City, Kansas; a 1988 shoplifting charge, Junction City, Kansas; a 1988 possession of an open container, Junction City, Kansas; a 1988 shoplifting, a 1987 conspiracy to distribute and a 1986 shoplifting, all in Junction City, Kansas.

At the appointed time for the hearing the applicant did not appear, although he had been noticed, and the evidence adduced by the counsel for the Gaming Commission was that he had received the notice of the hearing but the hall and the roll call thrice, the applicant did not appear.

Based on the evidence which was adduced and based on Mr. Thomas's failure to appear, it is the recommendation of the hearing officer that the applicant did not meet by clear and convincing evidence that he should be granted a license and hence that should be
CHAIRMAN KOHN: One thing that I thought was kind of strange here, in his written statement where he's asked why did you fail to disclose your 1988 felony conviction, he said I have no idea what this charge is. Is there anything to that?

MR. STEIB: Nothing to it because --

CHAIRMAN KOHN: The charge was real?

MR. STEIB: -- the applicant did not appear for me to interrogate him regarding that, or for counsel, so it really wasn't an issue in this matter.

CHAIRMAN KOHN: How did this piece of paper become an exhibit?

MR. STEIB: The charges?

COMMISSIONER JAMISON: His written statement.

He made a written statement to the Gaming Commission and the Gaming Commission submitted it as a piece of evidence.

MR. STEIB: Right. It was introduced into evidence.

CHAIRMAN KOHN: So this was before the hearing?

MR. STEIB: It was submitted into evidence at the hearing, but the paper was submitted and the Gaming Commission had access to that prior to the Commission.
It was introduced by counsel for the Gaming Commission.

CHAIRMAN KOHN: Okay.

MR. GREWACH: If I could follow up on that.

Our investigator's practice is when the record comes back and shows nondisclosed arrests or convictions, the first thing they do is sit down with the applicant and ask them about that and ask them to provide a written statement relating to that, and that's the document that you're talking about.

And I might also add that when the record came back, it does show that the applicant was convicted in 1988 and given probation on the felony theft charge in Junction City, Kansas.

CHAIRMAN KOHN: Any other questions of Mr. Steib?

COMMISSIONER LOMBARDO: Yes.

It looks like he disclosed seven different, let's say, arrests or other criminal charges and then he failed to disclose an additional fourteen other. Am I reading that right?

He actually disclosed seven but he forgot to mention fourteen other ones?

MR. STEIB: I don't know about the others, but the seven that he did disclose were certainly resplendent enough to give serious consideration, and
since he did not appear that sort of ended the matter.

COMMISSIONER LOMBARDO: Right. Right. Okay.
CHAIRMAN KOHN: Any other questions?
Is there a motion with respect to Resolution 17-014?

COMMISSIONER NEER: Motion to approve.
COMMISSIONER JAMISON: Seconded.
CHAIRMAN KOHN: Discussion on the motion?

Angie.

MS. FRANKS: Commissioner Lombardo.

COMMISSIONER LOMBARDO: Approve.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Hale.

COMMISSIONER HALE: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

MS. FRANKS: By your vote you've adopted Resolution No. 17-014.

MR. STEIB: Thank you.

CHAIRMAN KOHN: Mr. Seibert.

EXECUTIVE DIRECTOR SEIBERT: Mr. Chairman,

the next order of business is Consideration of
Disciplinary Actions. Mr. Ed Grewach will present.

MR. GREWACH: Thank you, Director Seibert, Mr. Chairman, Commissioners.

Under Tab F we have a Preliminary Order of Discipline directed to Mark Twain Casino for followup audit findings.

Commission staff performed a compliance audit covering the time period from August 2013 through June of 2015. After the audit was completed the staff met with the casino personnel and presented the findings of the audit, and the casino responded by listing the remedial steps they planned to take to correct those audit findings.

The staff then performed a followup of the audit on March -- during March of 2016 and in that followup found two significant findings that had not been corrected.

The first involves a violation of Minimum Internal Control Standards B1.05, which requires when an employee who has key access changes position, that the key status of that employee be updated within 72 hours of the transfer.

The reason for this rule is to prevent an employee from having access to areas that their current job duties would not authorize.
The original audit found that eight employees during the audited time period had changed positions while they had key access. One changed from a security officer to a dealer, a second from a security officer to a count team member.

In two of those eight instances we found that their key access had not been updated within the required 72 hours. As a matter of fact, in one it was 33 days before it was corrected and in the other it was 47 days.

During the followup the staff reviewed records through December of 2015 and through the month of February 2016.

They found during that time period there was one employee who had key access who was transferred, in this case from an audit clerk to a count team clerk, and that key access had not been changed within 72 hours, and the fact again, it had not been changed until 33 days after the transfer took place.

The second audit finding involved violation of Minimum Internal Control Standard G7.10, which requires count team members to clear their hands when their hands are going to or from a table when funds are present.

Now, clearing the hands involves a process
where you display both the palm and the top of your hands both to surveillance and to the other people at the count team to ensure that there is no improper handling of the funds.

The original audit found the 57.7 percent error rate in the sample that was reviewed. When the staff did their followup in March, they found a 43.7 percent error rate.

In addition, one of the MGC agents on the boat, Trooper Harrison, did a review of surveillance during the month of February 2016 on various dates, found varying error rates which averaged to 70 percent during that time period.

The staff recommended a $5,000 fine against the casino for these followup audit findings. The casino sent in a response to that recommendation in which they indicated that they had changed the process to attempt to remediate this problem and also pointed out that there was no actual improper access to any areas by the transferred employees during the time period and asked for the staff to consider reducing the recommended fine.

Staff met and it was the staff's position to continue with the recommendation of a $5,000 fine for this violation.
CHAIRMAN KOHN: Ed, you lost me a little bit on the error rate.

Which one of the two were you referring to on the 40, 70 whatever percent error rate was? The showing of the hands or the --

MR. GREWACH: The showing of the hands.

CHAIRMAN KOHN: So half the time or more the dealers are not showing their hands?

MR. GREWACH: It's the count team members not showing their hands when they're taking their hands to and from the table. And again, the significance of that is to make sure no one is taking money off of the table.

COMMISSIONER JAMISON: But the 40 to 90 percent was over -- in a short timeframe review. Correct? It was just in a week's period?

MR. GREWACH: Yes. There was several dates.

COMMISSIONER JAMISON: I mean, they did a longer-term audit, is that correct, that showed 43 percent?

MR. GREWACH: Yes.

COMMISSIONER JAMISON: And then they did a short audit that showed a higher rate but it wasn't as long a term as the audit? Am I reading that correctly?

MR. GREWACH: There are actually two different reviews that happened simultaneously. One was
the MGC compliance auditor's, and that was the 43.7 percent. They looked at two days of surveillance coverage to determine that percentage.

Separately Trooper Harrison did his own review, and he picked several specific dates in the month of February, which, of course, occurred, you know, prior to the time we did our followup, and it's from Trooper Harrison's report that we had the 70 percent error rate that he observed and reported to us.

COMMISSIONER JAMISON: Okay.

And he did complete day audits on that?

MR. GREWACH: He did and I could tell you --

COMMISSIONER JAMISON: I'd like to hear a little bit about that, because, I mean, if we're quoting that in the report here, I'd kind of like to know the -- I mean, if he's not a normal -- I mean, I'm not saying he didn't do a great job, but if he's not a normal audit procedure process, I want to hear what his audit process was.

MR. GREWACH: Trooper Harrison reviewed surveillance on February 1st, 3rd, 5th, 6th, 8th and 10th and recorded the number of instances where the count team members took their hands to or from the table and also recorded the number of times they failed to clear their hands, and then for each day came up with a
different percentage, from a low of 40 percent to a high of 91 percent, and then the average, when we averaged those, that's how we in reviewing Trooper Harrison's review came up with a 70 percent number.

COMMISSIONER JAMISON: So he had more towards 90 than he did towards 40?

MR. GREWACH: One was 40, one was 63, one was 84, one was 89, one was 55 and one was 91.

COMMISSIONER JAMISON: All right.

CHAIRMAN KOHN: All right. It seems like something that is seemingly so standard, it almost looks like it's a blatant disregard of the rule when you get up to that high percentage, like we don't care.

MR. GREWACH: When it comes to, you know, our audit process, you're never going to achieve 100 percent. There is always going to be some employees that fail.

But I agree with you, Mr. Chairman. You know, when we look at percentages this high, and particularly when you look at the -- even when you just look at just the compliance audit followup, just reducing it from the 57 to 43 percent isn't a real significant improvement between those two time periods.

Now, what the casino --

COMMISSIONER JAMISON: Better than 70?
COMMISSIONER NEER: These were all different count team members. Correct?

MR. GREWACH: Well, I mean, you look at a day and you would have different shifts, you know. So, yes, I mean, it cuts across probably every count team member that they have working for them when you look at the sample of days and shifts that you review in looking at it.

CHAIRMAN KOHN: I think you're going easy on them.

COMMISSIONER NEER: It's a systemic issue.

COMMISSIONER HALE: In one of the more critical areas of the casino, the count room.

COMMISSIONER JAMISON: Now, he didn't say it was in the count room, did you? Did you say it was the count team at the tables?

COMMISSIONER HALE: Oh, at the tables.

MR. GREWACH: No. In the count room. It's in the count room.

COMMISSIONER JAMISON: I thought you said it was the count team at the tables.

MR. GREWACH: Well, there's a table in the count room.

COMMISSIONER JAMISON: Okay. So you're not talking at the gaming tables?
COMMISSIONER HALE: Talking at the count room.

MR. GREWACH: I apologize for that.

COMMISSIONER NEER: That's where they stack the $4 million against the wall periodically.

CHAIRMAN KOHN: Are there any other questions of Ed or discussion?

Is there a motion with respect to DC-17-028 either as approved or different?

I'm sorry. Not as approved. As recommended or different.

COMMISSIONER JAMISON: I would move for approval as recommended.

COMMISSIONER NEER: I'd second it.

CHAIRMAN KOHN: Discussion on the motion?

Angie.

MS. FRANKS: Commissioner Lombardo.

COMMISSIONER LOMBARDO: Approve.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Hale.

COMMISSIONER HALE: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.
CHAIRMAN KOHN: Approve.

MS. FRANKS: By your vote you've adopted DC-17-028.

EXECUTIVE DIRECTOR SEIBERT: The next order of business is Consideration of Settlement Agreement.

Mr. Ed Grewach.

MR. GREWACH: Thank you.

Tab G is a resolution to approve the settlement of a Preliminary Order of Discipline issued to Gerard Smriga who is the general manager of the Mark Twain Casino.

On May the 25th, 2016 the chief operating officer, Jeffrey Solomon, of Affinity Gaming, who is the parent company of Mark Twain Casino, was scheduled to visit the Mark Twain Casino.

Our patrol boat sergeant at the boat met with the security supervisor at the casino and reminded the security supervisor to make sure that Mr. Solomon had either a casino access badge or a visitor badge when he visited the casino as is required by the rules.

The security supervisor passed that information on to Mr. Smriga. Mr. Smriga disagreed with that interpretation of the rule but, however, did not meet with the gaming agent to discuss his understanding of the rule.
And then as a consequence Mr. Solomon came and entered nonpublic and sensitive areas of the casino without a casino access badge in violation of the rule.

In addition, as the Patrol agents were investigating the matter, they found that on May 17, 2016 Mr. Smriga himself accessed the floor, nonpublic areas of the casino, without wearing any of his required badges.

The original Preliminary Order of Discipline recommended a five-day suspension. Mr. Smriga hired an attorney, Mr. Riffel. Through negotiations the staff has entered into a tentative agreement to amend the Preliminary Order of Discipline to two days subject to the Commission's approval.

CHAIRMAN KOHN: Questions?

COMMISSIONER JAMISON: I don't ask this kindly or uniquely.

COMMISSIONER NEER: You've never been bashful before.

COMMISSIONER LOMBARDO: Come on, Brian. Spit it out.

COMMISSIONER JAMISON: What mitigating circumstances did you consider in going from five to two?

I mean, I understand it's a negotiation. I
understand we start at five. We end at two.

Is it just merely a number thing or did we have mitigating circumstances?

MR. GREWACH: I would say one consideration was that Mr. Smriga, although wrong, you know, was acting on his belief that the rule didn't require Mr. Solomon to have a casino access badge.

Now, the rule when you read it very clearly says any occupational licensee, which Mr. Solomon is, needs to have a casino access badge to enter any nonpublic areas of the casino. So he was operating under an incorrect interpretation.

I think the big failing that he had and the reason it caused the problem in the first place, again, was he should have met with the boat sergeant and discussed his understanding and the problem could have been avoided.

COMMISSIONER JAMISON: But during his misunderstanding the message was relayed to him from a Gaming Commission officer. Correct?

MR. GREWACH: Actually from a security supervisor.

COMMISSIONER JAMISON: I know. It wasn't from a Gaming Commission officer directly to him but it was relayed to him that there was a different opinion by
Gaming Commission personnel?

MR. GREWACH: That's correct.

COMMISSIONER JAMISON: And he did nothing to address or talk about that when he was given that information?

MR. GREWACH: That's correct.

COMMISSIONER JAMISON: So it isn't the fact that he just was under a wrong opinion and was blindly walking along with his wrong opinion. He was informed that his opinion was wrong but did nothing to find out if his opinion was right or just ignored the advice of the gaming officer. Is that correct?

MR. GREWACH: I would say so.

Again, the exact sequence was the security supervisor said, you know, Gaming says Mr. Solomon needs a badge. Mr. Smriga says, no, he doesn't, and that was basically that discussion between Mr. Smriga and his security supervisor.

COMMISSIONER LOMBARDO: But he clearly understood that the directive came from a Gaming Commission officer?

MR. GREWACH: That's correct.

COMMISSIONER JAMISON: And he disregarded it?

MR. GREWACH: He did, yes.

COMMISSIONER JAMISON: So it wasn't -- I
mean, I get how you're phrasing it, that he was operating under a false opinion, but I would feel better about that if he was operating under a false opinion and hadn't been given advice, correct advice?

COMMISSIONER LOMBARDO: Or if he had perhaps gone and checked out his opinion, which apparently was wrong.

MR. GREWACH: Yes.

To me that's the main failing in this case, you know. People can misread and misinterpret, misunderstand things, disagree with us, but a discussion with our agent would resolve the issue prior to it becoming a disciplinary issue.

And I guess, Commissioner Jamison, the other thing is that the underlying violation itself, Mr. Solomon going onto the nonpublic areas of the casino without a casino access badge, isn't in the realm of seriousness --

COMMISSIONER JAMISON: He was with an authorized person. It wasn't like he was allowed to go there by himself without an escort?

MR. GREWACH: Correct. He was just -- if he had the badge, it would have been fine. He didn't have the badge. So it's more of a technical violation. So I have to say that probably came into our consideration in
agreeing to the two --

COMMISSIONER JAMISON: Maybe this is my procedural day.

What's the procedure if we don't concur with the settlement?

MR. GREWACH: Then we go forward with the original Preliminary Order of Discipline recommending the five-day suspension. That would go to a hearing, be presented to you by the hearing officer and then you'd make a final decision on it at that point.

COMMISSIONER JAMISON: Okay.

CHAIRMAN KOHN: But, Ed, you are satisfied in your negotiations with Mr. Riffel that this result as set out in the settlement is a fair one?

MR. GREWACH: You know, we do. And again, I guess the one point is that when you look at the underlying violation, you know, that wouldn't be something we would necessarily even give a suspension for itself, Mr. Solomon coming into the -- as a matter of fact, no discipline was taken against Mr. Solomon for coming into a nonpublic area without a casino access badge.

COMMISSIONER JAMISON: I'm not as concerned about the -- I would agree I'm not as concerned about the violation or what the basis was, is for the
disregard and the I know best disregard of an opinion.

MR. GREWACH: Yes.

CHAIRMAN KOHN: Any further questions?

Any further discussion?

Is there a motion with respect to Resolution 17-015?

COMMISSIONER HALE: Mr. Chairman, I move for adoption of Resolution No. 17-015.

CHAIRMAN KOHN: Is there a second?

Motion dies for lack of a second.

I guess you and Mr. Riffel have some more talking to do.

MR. GREWACH: Yes.

CHAIRMAN KOHN: Okay.

MR. GREWACH: We'll proceed accordingly.

CHAIRMAN KOHN: Mr. Seibert.

EXECUTIVE DIRECTOR SEIBERT: The next order of business, Mr. Chairman, is Consideration of Ratification of Chairman's Extension of Supplier's License. Mr. Ed Grewach will present.

MR. GREWACH: Casino Tech is a holder of a supplier's license. They were set to expire on February 28th, 2017. We have a rule, Rule 4.250, that requires suppliers to file their renewal application 120 days
prior to its expiration. The obvious reason for this rule is to give us time to complete the investigation and present the renewal to the Commission prior to the expiration.

However, in this case we did not receive the renewal application from Casino Tech until January 20th, 2017.

Now, the rule cited in the Resolution Rule 1.020(4) grants the Chairman the authority, which he has exercised here, to extend the license up to 60 days, and the extensions entered would extend the license to April the 30th, 2017.

The rule further requires that the Commission at its next regular meeting ratify the Chairman's act in extending the license, and the purpose of the extension then is for our staff to complete the investigation, present it to the Commission at the April meeting.

CHAIRMAN KOHN: So you-all need to bail me out here.

COMMISSIONER JAMISON: I move for adoption of 17-016.

CHAIRMAN KOHN: Is there a second?

COMMISSIONER LOMBARDO: Second.

CHAIRMAN KOHN: Discussion on the motion.

Angie.
MS. FRANKS: Commissioner Lombardo.
COMMISSIONER LOMBARDO: Approve.

MS. FRANKS: Commissioner Neer.
COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Hale.
COMMISSIONER HALE: Approve.

MS. FRANKS: Commissioner Jamison.
COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.
CHAIRMAN KOHN: Approve.

MS. FRANKS: By your vote you've adopted Resolution No. 17-016.
CHAIRMAN KOHN: Let's see. So we've got 17-017 next.

EXECUTIVE DIRECTOR SEIBERT: Yes. The next order of business is Consideration of Level I/Key Applicants. Trooper John Masters will present.

TROOPER MASTERS: Mr. Chairman and Commissioners, good morning.
CHAIRMAN/COMMISSIONERS: Good morning.
TROOPER MASTERS: Missouri State Highway Patrol investigators, along with MGC financial investigators, conduct comprehensive background investigations on key and Level I applicants. The investigations include, but are not
limited to, criminal, financial and general character
inquiries which are made in the jurisdictions where the
applicants lived, worked and visited.

The following individual is being presented
for your consideration: Brian Marsh, Vice President and
General Manager for Tropicana Entertainment.

The result of this investigation was provided
to the MGC staff for their review and you have the
related summary report before you.

Thank you.

CHAIRMAN KOHN: Is there a motion with
respect to Resolution 17-017?

COMMISSIONER LOMBARDO: Motion to approve.

COMMISSIONER HALE: Second.

CHAIRMAN KOHN: Discussion on the motion?

Angie.

MS. FRANKS: Commissioner Lombardo.

COMMISSIONER LOMBARDO: Approve.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Hale.

COMMISSIONER HALE: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.
CHAIRMAN KOHN: Approve.

MS. FRANKS: By your vote you've adopted Resolution No. 17-017.

CHAIRMAN KOHN: Mr. Seibert.

EXECUTIVE DIRECTOR SEIBERT: The next order of business is Considerations of Rules and Regulations.

I believe Mr. Ed Grewach stepped out. No.

He's here.

MR. GREWACH: Okay. I assume I'm up.

CHAIRMAN KOHN: You're up.

MR. GREWACH: Sorry about that.

Under Tab J we have three Final Orders of Rulemaking. The background of these rules is --

CHAIRMAN KOHN: Let me interrupt one second. If you recall, these are -- tell me if I'm right about this, Ed. These are the rules and regulations that we did not take up a month ago because of the Governor's edict on any new rules and regulations, or is this not covered by those?

MR. GREWACH: No. This was covered by those but these --

COMMISSIONER JAMISON: These were not presented at the last meeting.

MR. GREWACH: Correct, because these are just coming up -- or scheduled to come up now.
In the Governor's Executive Order, Order 17-03, prohibited all State agencies from adopting any new rules -- proposing or adopting any new rules without the Governor's Office's permission.

And we submitted these to the Governor's Office, and did receive written permission from the Governor's Office to proceed.

And the reason we wanted to do that was this is a set where the Preliminary Orders of Rulemaking were approved on October 26th of 2016. We went through the hearing process. The public hearing was in January, January 10th of this year.

And so they were -- we have to -- we had to approve them on this date because of the timing of Chapter 536. Otherwise, we'd have to go back to step -- to square one to start over again.

And we just received the authority from the Governor's Office to present these final orders to the Commission.

CHAIRMAN KOHN: And that's the point I wanted to make, that we are now proceeding in accordance with the Governor's Office approval.

MR. GREWACH: We are, yes. Yes.

Now, the background of these rules, particularly 5.183 and 5.184, is that the existing rule
required cards prior to be placed into play had to be
sorted by sequence and suit and the back of each card
inspected.

Now, several years ago manufacturers began
selling preshuffled cards, and the existing rule did not
allow those to be used.

There was a request from the casino industry
for us to amend the rule to allow that, and those
changes you'll see in 5.183 and 5.184 accommodate that
request by the industry while we feel still will protect
the integrity of the games and the process.

The -- they allow the use of preshuffled
decks, and they also allow the use of an automated
shuffler.

So the process, instead of having to separate
the cards out by sequence and by suit, the automated
shuffling machine can do that for them.

We also looked at the issue of inspecting the
back of cards. Now, we do still require them to inspect
the back of cards for any game where the cards are used
more than once, but we did give them an exemption for a
game in which cards were only used once.

And the reason there is, if there's a mark on
the back of a King of Spades and if I see that and I
know that's the King of Spades, then the next time it's
dealt, even though it's facedown, I'll know that's a King of Spades and would give someone an opportunity to cheat or gain an unfair advantage from the game.

However, if you have a game -- and there are several -- where the cards are just used once, then there is no advantage to there being a mark on the back of a card because it doesn't matter.

Now, that is significant to the casino industry because their motivation in asking this is to speed the game up, because the patrons -- when they bring new decks into play, the patrons have to sit and wait under the old rule while they got separated out into sequence and suit and flipped them over and inspected the back of the cards.

And the benefit of the rule change is it speeds up the process both for the patrons and for the casinos, because frankly they were concerned that people would get up and leave, didn't want to wait for that long process to take place at the table.

But still requiring the inspection on the back of the cards that are going to be used more than once, we felt we had to keep that requirement in to maintain the integrity of the game.

Again, as I mentioned, these are rules that were originally approved as preliminary rules on
October 26th, 2016, and we've had the public hearing on that. If the Commission today approves them, they would have an effective date of June 30th, 2017.

CHAIRMAN KOHN: I'm just curious. What game is there where the deck of cards is just used once?

MR. GREWACH: Can I call on our Compliance Audit Manager Leshia Kempker to answer that question. I could try but she'll know better.

MS. ALONZO: Cheryl Alonzo --

MR. GREWACH: Cheryl Alonzo, our Assistant Deputy Director.

MS. ALONZO: Some of the casinos will use alternative dealing procedures on baccarat, for example, where -- because they let the patrons handle the cards and they will crimp them, bend them, and so they don't want to reuse them because that would mark those cards.

But some games can be dealt with or without the alternative dealing, the same game. In some cases they let them handle them and other table rules they won't. It's at their discretion.

CHAIRMAN KOHN: Thank you.

Any questions of Ed?

COMMISSIONER JAMISON: I move for -- we can do all three of them --
CHAIRMAN KOHN: We can do all three at once?

MR. GREWACH: Yes.

CHAIRMAN KOHN: Okay.

COMMISSIONER JAMISON: I move for adoption of 11 CSR 45.5.183, 5.184 and 45-9.104.

CHAIRMAN KOHN: Is there a second?

COMMISSIONER NEER: Second.

CHAIRMAN KOHN: Discussion on the motion?

Angie.

MS. FRANKS: Commissioner Lombardo.

COMMISSIONER LOMBARDO: Approve.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Hale.

COMMISSIONER HALE: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

MS. FRANKS: By your vote you've adopted the Final Orders of Rulemaking 11 CSR 45-5.183, 5.184 and 9.104.

MR. GREWACH: If I could, Mr. Chairman, going back to Tab G, I didn't realize Mr. Riffel was here, and he asked if he could have permission to address the
Commission on the issue of the approval of the settlement agreement.

CHAIRMAN KOHN: All right.

I've never said no to Mr. Riffel.

MR. RIFFEL: Mr. Chairman, I can't talk to you.

Mr. Chairman and Commissioners, Jerry Riffel, Lathrop & Gage, 2345 Grand, Kansas City.

I am representing Gerry Smriga. I want to say initially -- and I won't belabor this a long time -- I've known Gerry a long time, and the reason for that is that I am also Affinity Gaming's Missouri counsel.

I have worked with him on many, many issues, and I can assure you that in my opinion based upon that relationship, I would be shocked if Mr. Smriga ever intentionally violated any rule of the Commission or regulation or minimum rule or whatever, absolutely shocked. He's an outstanding general manager. He has led that facility for a long, long time.

He's right here. Stand up, Gerry.

And he has felt a lot of remorse and suffered a lot as a result of this, and I know that from discussing it with him, and I just would like to ask you to please reconsider whether to accept the settlement -- whether to vote for the settlement on this basis.
First of all, in my opinion -- and I'm not --

he would never purposely violate a rule that he

understood was a rule and was interpreted in that way.

If you do read this particular regulation, it

is hard to understand. It is unclear. It could be read

in either way in my opinion.

What happened was Mr. Smriga had worked with

Clarence Greeno, who was earlier an operations person

for the Commission.

Mr. Greeno -- he had asked Mr. Greeno some

time ago about this particular regulation, and he was

relying on his interpretation.

We don't question whether the Commission's

representative contacted our security officer, but

Mr. Smriga -- and he'll come up and testify if you

want -- was not told of this contact until the end of

the morning after Mr. Solomon had done his tour, and so

that was the reason for the violation.

Obviously this will never occur again, and

this man is I think a credit to the gaming industry in

Missouri and certainly one of our finest, young officers

and leaders in our company, so please reconsider this.

Thank you.

CHAIRMAN KOHN: Thank you, Mr. Riffel.

The Commission has already acted on the
settlement proposal. I thought maybe you and

Mr. Grewach had a different proposal for us to consider.

MR. RIFFEL: Well, we could consider that.

COMMISSIONER HALE: He's behind you.

MR. RIFFEL: Could we step outside?

CHAIRMAN KOHN: Yeah, we're going to be in --

we're going into closed session soon but we'll come back

into open session after that.

Is that okay with the Commissioners?

COMMISSIONER LOMBARD: Yes.

COMMISSIONER HALE: Yes.

CHAIRMAN KOHN: All right.

MR. RIFFEL: Okay. Thank you, Mr. Chairman.

CHAIRMAN KOHN: That concludes our open

session.

COMMISSIONER JAMISON: Wait.

If Mr. Smriga is here and is willing to

testify, I would like to hear from him about when he was

notified. Is that appropriate?

COMMISSIONER LOMBARD: I have a question

about that.

CHAIRMAN KOHN: I think --

COMMISSIONER LOMBARD: I have a question

about that, because what we're getting into -- and, Ed,

maybe you can answer.
What we're getting into is we're about ready
to hear evidence. That was not the original purpose of
this proceeding, and I'm wondering if we can do that
without giving --

COMMISSIONER JAMISON: That's my question.

COMMISSIONER LOMBARDO: -- without giving the
Commission an opportunity to also present evidence, and
that wasn't what it was noticed for.

CHAIRMAN KOHN: I agree with Rick. I have a
problem re-opening this.

And we listened to Mr. Riffel just as a
courtesy, but I think this now has to be between the two
of you, and I don't think that we should open ourselves
up for an evidentiary hearing.

COMMISSIONER HALE: Mr. Chairman, if I might,
I think what we end up doing then is affording the
parties an opportunity to renegotiate with a view
towards possibly modifying the previous agreement in
such a way that it's acceptable to both parties and then
at some point re-present it to the Commission.

CHAIRMAN KOHN: That's exactly what I --

COMMISSIONER JAMISON: My concern was if we
were going to come back for a post-closed meeting
discussion about it --

COMMISSIONER HALE: I don't think -- once
we've already voted on it I think that's done.

COMMISSIONER JAMISON: I'm good with that, but I got the impression that we were going to revisit --

CHAIRMAN KOHN: Here is what we're going to do. We're going into closed session. Mr. Riffel and Mr. Grewach are going to have a further discussion. If that discussion results in a further settlement agreement for the Commission to consider, we will do so when we come back in open session. If it doesn't, we won't hear it. Okay.

So, Brian, do your thing.

COMMISSIONER JAMISON: Okay. I move for a closed meeting under Sections 313.847 and 313.945, Revised Missouri Statutes, investigatory, proprietary and application records and 610.021, Subparagraph 1, Revised Missouri Statutes, legal actions, Subparagraph 3 and Subparagraph 13, personnel, and Subparagraph 14, records protected from disclosure by law.

COMMISSIONER LOMBARDO: Second.

Angie.

MS. FRANKS: Commissioner Lombardo.

COMMISSIONER LOMBARDO: Approve.

MS. FRANKS: Commissioner Neer.
COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Hale.

COMMISSIONER HALE: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

We are going into closed session, and we will come back out at the conclusion of the closed session and reopen the open session if it’s necessary.

WHEREIN, the meeting concluded at 11:30 a.m.
CERTIFICATE OF REPORTER

I, Patricia A. Stewart, CCR, a Certified Court Reporter in the State of Missouri, do hereby certify that the testimony taken in the foregoing transcript was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this transcript was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

__________________________
Patricia A. Stewart
CCR 401
The Missouri Gaming Commission (the “Commission”) went back into open session at approximately 11:30 a.m. on March 1, 2017, at the Missouri Gaming Commission’s Jefferson City office.

Commissioner Jamison moved to adjourn the open session. Commissioner Hale seconded the motion. After a roll call vote was taken, Lombardo – yes, Neer – yes, Hale – yes, Jamison – yes, and Kohn – yes, the motion was unanimously approved.

The meeting ended at 11:32 a.m.