

**MARYLAND STATE LOTTERY COMMISSION
SEPTEMBER MINUTES**

DATE: September 16, 2010

TIME: 10:00 a.m.

PLACE: Maryland Lottery Headquarters

PRESENT: Chairman J. Kirby Fowler, Jr.
Vice Chairman Matthew Thomas
Commissioner F. Vernon Boozer
Commissioner Diane L. McGraw
Commissioner W. Ray Presley
Commissioner Bruce L. Reeder
Commissioner Kimberly D. Robertson
Commissioner George M. Wagner

Stephen Martino, Director
Gina Smith, Assistant Director/CFO
Robert Fontaine, Principal Counsel
John Gallagher, Chief Information Officer, Information Technology
Jill Baer, Director, Creative Services
Paul Dorsey, Director, Policy and Development
Robert Howells, Director, Procurement
Michael Eaton, Director, Internal Audit
Holly Knepper, Deputy Counsel
Marie Torosino, Executive Associate

OTHERS: Representatives from Penn National Gaming/Penn Cecil Maryland
Representatives from Venable LLC (on behalf of PPE)
Jeff Hale, Scientific Games Online Entertainment Systems
Members of the Public

CALL TO ORDER

There being a quorum present, Chairman Fowler called the meeting of the Maryland Lottery Commission to order at 10:12 a.m. Commissioners present were J. Kirby Fowler, Jr., Matthew Thomas, F. Vernon Boozer, Diane L. McGraw, W. Ray Presley, Bruce L. Reeder, Kimberly D. Robertson, and George M. Wagner.

APPROVAL OF MINUTES

Chairman Fowler stated the August 26, 2010, minutes were provided to the Commissioners for review and asked if there were any corrections. There were none. Vice Chairman Thomas motioned that the minutes be approved, and it was seconded by Commissioner Robertson. The August 26, 2010, Commission minutes were approved by unanimous vote of the Commission.

CONSENT AGENDA

Mr. Martino said the Consent Agenda contains non-controversial items such as instant ticket games and software component testing. If it meets with their approval, the Commission would vote on the Consent Agenda as a whole.

For the record, the new instant ticket games presented on the consent agenda were: Game #841 *Tinsel Town*, Game #846 *Money Maker*, and Game #847 *Sweet 7's Doubler*. (Exhibit #1)

For the record, presented on the consent agenda were the VLT Games and Component Testing – GLI Game Hardware and Software Certifications. (Exhibit #2)

After discussion, Chairman Fowler requested a motion to approve the Consent Agenda items. Motion made by Commissioner Robertson, seconded by Commissioner Wagner and motion carried by unanimous vote of the Commission.

COMMISSION ITEMS

Code of Conduct

Mr. Martino said the Commission was previously provided with a proposed Code of Conduct for their review. These standards of conduct would apply to the Commission, Lottery Director and all Lottery employees in dealing with the VLT program. Chairman Fowler asked if there were any further questions. Commissioner McGraw had questions which were answered by the Director. Mr. Martino said Lottery staff was provided a copy. All personnel including the Commission are required to sign acknowledgement form. Chairman Fowler said he would entertain a motion to approve the Code of Conduct,

incorporating domestic partner and parent-in-law into the definition of “family member.” Motion was made by Commissioner McGraw, seconded by Vice Chairman Thomas, and motion carried by unanimous vote of Commission.

Operator License Hearing – Hollywood Casino at Perryville/Penn Cecil

Mr. Martino said the Commission had been provided with information regarding the requirements to issue a preliminary license for Hollywood Casino at Perryville to Penn National Gaming (PNG). There were 26 requirements identified by legal staff that PNG needed to verify in order to be issued the license. There were representatives present from PNG to answer any questions. Chairman Fowler asked if PNG fell short of any of the requirements. Mr. Martino responded a few requirements have not been completed, one of which is the testing procedures at the controlled demonstration that has not yet occurred. The Commission will vote on a conditional license that will be signed by the Chairman. Then upon successful completion of the controlled demonstration, the Lottery Director would sign the balance of the license. The license will not be signed by the Director until he is satisfied that all items on the checklist have been satisfactorily completed.

A series of questions were asked by the Commissioners regarding bond requirements, occupancy issues, employee training and licensing, responsible gambling plan, the surveillance system, facility parking and the number of employees, and the questions were satisfactorily answered by staff. Chairman Fowler asked if there were any further questions. Commissioner Wagner asked if now is the proper time to address the correspondence in reference to Penn National and PPE. Chairman Fowler responded at this time he feels it would be appropriate for the Commission to move into closed session to consult with legal counsel to discuss that issue.

CLOSED SESSION

Chairman Fowler said pursuant to State Government Article §10-508(a)(7), he would entertain a motion to move to a closed session to consult with counsel to obtain legal advice pertaining to the Commission’s power and the petition from PPE as well as Penn National’s response to the petition. Motion made by Commissioner Wagner, seconded by Commissioner Robertson and motion carried by unanimous vote of the Commission. See attached Statement for Closed Meeting, pursuant to State Government Article §10-508(a). (Exhibit #3) The meeting moved to a closed session at 10:34 a.m.

In addition to the eight Commission members, the following were present during the closed session: Stephen Martino, Gina Smith, Robert Fontaine, Holly Knepper, Paul Dorsey, Jill Baer, Robert Howells, John Gallagher, Michael Eaton, and Marie Torosino. The meeting returned to open session at 11:38 a.m.

Operator License Hearing – Hollywood Casino at Perryville/Penn Cecil (continued)

Chairman Fowler announced that during the closed session, the Commission received advice of counsel with respect to the Commission's powers and options for addressing the requests by PPE and Penn's response.

Chairman Fowler said he will enter into public comment to address the issues raised by Commissioner Wagner, the petition made by PPE, Penn National's response and any other public comments.

Mr. James Shea from the law firm of Venable, LLP, gave his presentation in reference to the petition filed by PPE Casino Resorts Maryland, LLC (PPE) concerning allegations that PPE raised about Penn Cecil Maryland, Inc. (Penn Cecil). He provided exhibits to the Commission that consisted of an article from the Maryland Gazette dated September 11, 2010 (Exhibit #4) and a partial transcription of WYPR Mid-Day with Dan Rodricks Program of August 18, 2010 along with the CD. (Exhibit #5).

Chairman Fowler thanked Mr. Shea and said there will be no opportunity for reply. He said he will now allow equal time to PNG for their response and called on Mr. Michael Berman. Mr. Berman presented his comments in response to Mr. Shea's presentation regarding PPE's petition.

Chairman Fowler asked if there were any other public comments with regard to any other requirements of the license. There were none.

Chairman Fowler called on each Commissioner to give their impressions of what they heard and any recommendations as to the next step. Each Commissioner expressed their thanks to both parties for their presentations and presented their individual comments.

Chairman Fowler said he appreciates Penn National's efforts in Cecil County and looks forward to the opening of the facility. However, he is concerned about the conduct in Anne Arundel County. Questions have arisen about the Commission's legal authority and the ability to issue sanctions and it seems that the Commission supports the decision to request an Opinion from the Attorney General with regard to that issue. The Commission has no issue with awarding the license to Penn National.

Chairman Fowler said he would entertain a motion to seek the Opinion of the Attorney General since that is the consensus of the Commission. Motion made by Commissioner Robertson, seconded by Commissioner Presley, and motion carried by unanimous vote of Commission.

Chairman Fowler said with regard to the license itself, he said would entertain a motion. At this time Mr. Thomas Auriemma, Vice President and Chief Compliance Officer of Penn National interrupted the Chairman and requested a five minute recess to have a discussion with Penn National staff before the Commission votes on the motion. Chairman Fowler called for a five minute recess at 12:43 p.m. However, at 1:12 p.m., he reconvened the

meeting for the purpose of hearing Lottery staff reports that are independent of the discussions prior to the recess.

STAFF REPORTS

Information Technology – **John Gallagher, Chief Information Officer**

Mr. Gallagher said in addition to his submitted report, the GLI independent testing of the GTECH central system was completed and there no issues were found. This was a requirement of the RFP.

Procurement – **Robert Howells, Director**

Mr. Howells said he had no further information to add to his report.

Internal Audit – **Michael Eaton, Internal Auditor**

Mr. Eaton said he had no further information to add to his report.

Administration, Finance & Operations and Sales – **Gina Smith, Assistant Director/AFO**

Ms. Smith said she had no further information to add to her report.

Creative Services – **Jill Baer, Director**

Ms Baer said she had no further information to add to her report.

Policy and Development – **Paul Dorsey, Director**

Mr. Dorsey said he had no further information to comment on.

Legal Unit – **Robert Fontaine, Principal Counsel**

Mr. Fontaine said he had no further information to add to his report.

VENDOR REPORTS

No reports presented.

COMMISSION BUSINESS

Commissioner McGraw requested a discussion of the upcoming meeting dates. After discussion, it was the consensus of the Commission to schedule the October meeting on

Friday, the 22nd, the November meeting on Thursday, the 18th and the December meeting on Wednesday, the 15th.

The full meeting reconvened at 1:15 p.m.

Operator License Hearing – Hollywood Casino at Perryville/Penn Cecil (continued)

Mr. Auriemma thanked the Commission for the brief recess. He said a tremendous amount of work and effort has gone into the opening of the facility in Perryville. He realizes the Commission is prepared to vote today with respect to the license application of Penn Cecil Maryland doing business as Hollywood Casino. However, based on the comments heard today, they have serious concerns and feel at this point in time it may unconstitutionally restrain activity in Anne Arundel County as well as with other Penn affiliates. Based upon that, they are requesting a continuance until another Commission meeting date before a vote is taken by the Commissioners.

Chairman Fowler said the only formal action that the Commission is asking of the Office of the Attorney General is to give the Commission an opinion on its authority and powers. It is not requesting the Attorney General to investigate Penn or its actions in this case.

Mr. Auriemma said they understand that, but wish to request a continuance at this point in time. Chairman Fowler suggested that the Commission move to closed session to consult with legal counsel.

CLOSED SESSION

Chairman Fowler said pursuant to State Government Article §10-508(a)(7), he would entertain a motion to move to a closed session to seek additional advice from legal counsel. Motion made by Commissioner Presley, seconded by Commissioner Reeder and motion carried by unanimous vote of the Commission. See attached Statement for Closed Meeting, pursuant to State Government Article §10-508(a). (Exhibit #6) The meeting moved to closed session at 1:24 p.m.

In addition to the eight Commission members, the following were present during the closed session: Stephen Martino, Gina Smith, Robert Fontaine, Holly Knepper, Paul Dorsey, Jill Baer, Robert Howells, John Gallagher, Michael Eaton, and Marie Torosino. The meeting returned to open session at 1:54 p.m.

Operator License Hearing – Hollywood Casino at Perryville/Penn Cecil (continued)

Chairman Fowler announced that during the closed session, the Commission consulted with legal counsel with respect to issuing the operation license for Penn Cecil.

Chairman Fowler said the Commission heard the request from PNG and would entertain any motions as a result of all the information presented today. Commissioner Boozer made

a motion to issue Penn Cecil a video lottery operation license subject to their successful completion of the following activities:

- 1) Completing to the Commission's satisfaction the controlled demonstration.
- 2) Meeting certain facility design standards (i.e., completing site work).
- 3) All employees having completed the licensing and training process.
- 4) The facility receiving a final Certificate of Occupancy from local officials.

Chairman Fowler asked if there was any discussion. Hearing none, he asked if there was a second to this motion. Motion seconded by Commissioner Wagner and motion carried by unanimous vote of the Commission.

Chairman Fowler made a motion to delegate Secretary Martino the authority to sign the operation license after all conditions are satisfied. Motion seconded by Commission Wagner and motion carried by unanimous vote of the Commission.

At 1:54 p.m. Commissioner Reeder left the meeting.

95% and Above Payback Percentages

Mr. Dorsey said the Commission was provided with a list of all machines with a 95% or over payback percentage. Under the law, any payback percentage over 95% must be approved by the Commission. After discussion, Chairman Fowler said he would entertain a motion to approve the 95% and above payback percentages. Motion made by Vice Chairman Thomas, seconded by Commissioner McGraw and motion carried by unanimous vote of Commission.

Regulations

Ms. Knepper said that three regulations were previously provided to the Commission members for their review.

As to regulations pertaining to video lottery employee identification cards, Ms. Knepper said there are provisions that need to be included for gaming, non-gaming and principal employees. However, if these additional provisions are added to the existing regulation that includes material on identification cards, the regulation will go over AELR's five-page limit for a regulation. Therefore, the recommendation is that COMAR 14.01.10.13F, which covers some requirements for employee identification cards will be deleted and the deleted material—along with new identification card material—will be contained in new regulation 14.01.10.20.

Proposed regulation 14.01.10.20 includes requirements related to the issuance of temporary and replacement video lottery employee identification cards. As drafted, proposed 14.01.10.20D requires that an employee who is issued a temporary identification card must surrender it on the next workday after it is issued the card. The Commission agreed with this provision. Regulation 14.01.10.20D also covers the cost of temporary and

replacement identification cards. As drafted, the cost would be \$25 for either type of identification card. However, staff was concerned that if the cost were the same for either card, that there would be no incentive for an employee to obtain a replacement card. Staff discussion resulted in changing the cost to \$20 for a replacement card and \$40 for a temporary card; the Commission agreed to this change. There were also one or two grammatical errors that would be corrected.

COMAR 14.01.14.44, Collection of Cash Storage Boxes: The regulation currently requires two locks on cash storage boxes. However, Mr. Eaton explained that staff has determined that the two lock requirement does not reflect current industry practice, and has proposed to changing the regulation to require one lock. Mr. Eaton stated that the change to one lock would not have a significant impact on controls of cash storage boxes.

Ms. Knepper directed the Commission's attention back to proposed regulation 14.01.10.20. In a conversation she just had with Mr. Dorsey, he suggested that the regulation require an employee to return a temporary identification card at the end of the licensee's workday on which the card is issued, not the next work day as previously discussed. Mr. Dorsey also clarified that a temporary card should cost \$20 and a replacement card should cost \$40, which is opposite of what was previously discussed. Ms. Knepper stated that she will make those changes with the Commission's approval. The Commission approved those changes.

Chairman Fowler said he would entertain a motion to approve amended regulations 14.01.10.13, 14.01.10.20 and 14.01.14.44. Motion made by Vice Chairman Thomas, seconded by Commissioner McGraw, and motion carried by unanimous vote of the Commission.

Chairman Fowler said he would entertain a motion to permit Lottery staff to submit each of the amended regulations approved today on both an emergency and regular basis. Motion was made by Commissioner Presley, seconded by Vice Chairman Thomas, and the motion carried by unanimous vote of the Commission.

DIRECTOR'S REPORT

Mr. Stephen Martino reviewed the sales and revenue report. Total games sales are down 2.94% and revenue is down 1.46% as compared to last year. Sales of Ravens Cash Fantasy instant tickets are doing well with over a third of the tickets being activated before the Ravens first regular season game.

Mr. Martino said Jennifer Kelley, the Responsible Gambling Coordinator, was recently hired and will start next Wednesday. Her previous employment was with the Department of Health and Mental Hygiene.

Mr. Martino said there is a controlled demonstration at Hollywood Casino on September 25. He asked that any Commissioners attending to stagger their attendance so as not to trigger an open meeting act. Please contact Ms. Torosino with your attendance time.

Mr. Martino said next week he and four other staff members will be attending the NASPL 2010 Conference in Grand Rapids, Michigan.

PUBLIC COMMENTS

There were no additional public comments.

DATE AND TIME OF NEXT MEETING

The next Commission meeting will be held on Friday, October 22, 2010, at 10 a.m.

ADJOURNMENT

There being no further business for discussion, Chairman Fowler said he would entertain a motion to adjourn. Motion made by Vice Chairman Thomas, seconded by Commissioner McGraw, and motion carried by unanimous vote of the Commission. The meeting adjourned at 2:05 p.m.

Respectfully submitted,

Stephen L. Martino