

**MARYLAND STATE LOTTERY COMMISSION
DECEMBER MINUTES**

DATE: December 14, 2010

TIME: 1:00 p.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 Kimberly D. Robertson (via conference call)
Commissioner George M. Wagner (via conference call)

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
John Mooney, Director, Enforcement
Holly Knepper, Deputy Counsel
Michael Eaton, Director, Internal Audit
Jennifer Kelley, Responsible Gambling Program Coordinator
Marie Torosino, Executive Associate

OTHERS: Representatives from Ocean Enterprises 589, LLC
Representatives from Scientific Games
Representative from GTECH
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 1:15 p.m. Commissioners present were Matthew Thomas, F. Vernon Boozer, Diane L. McGraw, and W. Ray Presley. Kimberly D. Robertson and George M. Wagner were present via conference call. Bruce Reeder was absent.

APPROVAL OF THE AGENDA

Chairman Fowler said he would entertain a motion to approve the Agenda. Motion was made by Vice Chairman Thomas, seconded by Commissioner McGraw and the motion carried by unanimous vote of the Commission.

APPROVAL OF MINUTES

Chairman Fowler stated the November 22, 2010, minutes were provided to the Commissioners for review and asked if there were any corrections. There were none. Commissioner Presley motioned that the minutes be approved, and it was seconded by Vice Chairman Thomas, and the minutes were approved by unanimous vote of the Commission.

CONSENT AGENDA

Chairman Fowler said the Consent Agenda contains new instant ticket games (Exhibit #1), VLT Games and Component Testing—GLI and BMM Games, Hardware and Software Certification (Exhibit #2), and the Specified Games with Percentages above 95% (Exhibit #3) for the Commission's approval.

For the record, the new instant ticket games were: Game #858 *Double Play*, Game #864 *Cash King*, Game #867 *Spring Green*, Game #870 *Cash Craze Crossword*, Game #871 *Bonus Cash Riches*, Game #872 *Hot Hand*, Game #873 *Crossword Multiplier*, Game #877 *Supreme 7's*, Game #879 *Great Golden 8's*, and Game #880 *Hot Dog Dollars*.

Chairman Fowler requested a motion to approve the new instant games. Motion was made by Vice Chairman Thomas, seconded by Commissioner Presley and motion carried by unanimous vote of the Commission.

Chairman Fowler requested a motion to approve the VLT Games and Component Testing. Motion was made by Commissioner McGraw, seconded by Commissioner Presley and motion carried by unanimous vote of the Commission.

Chairman Fowler requested a motion to approve the Specified Games with Payout Percentages above 95%. Motion was made by Vice Chairman Thomas, seconded by Commissioner Presley and motion carried by unanimous vote of the Commission.

VENDOR REPORTS

GTECH

Mr. Jeff Patchen, Site Manager, said operations at Perryville have been going well. The Ocean Downs facility is in the midst of installation of the video lottery machines, and it is on schedule. Chairman Fowler asked if the Director is satisfied with the performance of GTECH thus far. Mr. Martino responded yes.

Scientific Games

Mr. Stephen Smith said a demonstration of the Lottery in Motion (LIM) was held on November 19 for Lottery staff. SGI is on schedule for the February LIMs pilot program.

Chairman Fowler asked for the status of the new monitors at agent locations. Mr. Smith responded as part of the contract extension, SGI is purchasing 22 inch flat screen monitors to replace the 19 inch flat screens currently at agent locations.

COMMISSION ITEMS

Ocean Enterprise 589 (OE589)/Ocean Downs Casino Licensing

Mr. Martino said he provided information to the Commission concerning the license for Ocean Downs—the list of tasks and who was responsible to report to Commission that the task had been completed as well as documents from Ocean Downs. Some of the items that could not be completed by today were the control demonstration and the occupancy permit. Staff will ensure that any outstanding items are completed before the license is signed. The Commission Chairman will sign the license on behalf of the Commission and once staff is satisfied that all remaining items have been completed, the Director will sign as Secretary of the Commission. Ocean Downs then will be permitted to open to the public. The coin test is scheduled for December 16 and as of December 13, 90 percent of the machines were installed and communicating with the central system. The controlled demonstration is scheduled for December 29, and the grand opening is scheduled for January 4, assuming any outstanding issues are successfully completed. The Director said there are four plans that the potential licensee was required to submit in advance of today's hearing--internal controls, security, surveillance and responsible gambling. These plans were reviewed by the responsible Lottery staff persons.

Mr. Michael Vild from OE589 LLC said they find the relationship with Lottery staff satisfactory. They are excited about getting the casino operational and are available to respond to any questions. Chairman Fowler said he has heard good things about the cooperative relationship and appreciates all that is being done to get the casino up and running. He asked if the Commissioners had any questions. Commissioner McGraw asked how many employees have been hired and trained. Mr. Vild responded they expect to hire 234 employees. They are in various stages of the hiring, training and licensing process. OE589 expects to have the vast majority of employees licensed by December 29.

Vice Chairman Thomas asked if OE589 has been able to meet their MBE goal requirement. Mr. Vild responded that regular reports have been submitted to the Governor's Office of Minority Affairs (GOMA) on their MBE compliance. Mr. William Rickman of OE589 said the problem he has seen with meeting the MBE goals is in the cases where there is a sole source and the State mandates use of an individual contractor who is not an MBE. He feels that this should be addressed in the future. Mr. Howells said all casino development work is reported through GOMA. It is not monitored by the Lottery, and until a report is received by the Commission from GOMA, the Lottery is not aware of the information. Chairman Fowler said any recommendations for improvement are welcome. Mr. Martino said under the law, GOMA is in charge of evaluating MBE compliance for the casino facilities. GOMA completed a report in July, and he will provide that report to the Commission. He will contact GOMA concerning its plans for a follow-up report being provided to the Commission.

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 legal requirements for the Commission's issuance of a video lottery operation license to Ocean Enterprise 589, LLC (OE589). Motion was made by Commissioner Presley, seconded by Commissioner McGraw and motion carried by unanimous vote of the Commission. See attached Statement for Closed Meeting, pursuant to State Government Article §10-508(a) (Exhibit #4). The meeting moved to a closed session at 1:32 p.m.

In addition to the five Commission members present plus the two Commissioners on the phone, the following were present during the closed session: Stephen Martino, Gina Smith, Robert Fontaine, Jill Baer, John Gallagher, Paul Dorsey, Michael Eaton, Robert Howells, John Mooney, Jennifer Kelley, Holly Knepper and Marie Torosino. The meeting returned to open session at 1:52 p.m.

Chairman Fowler announced that during the closed session, the Commission consulted with counsel regarding the OE589 video lottery operation license issuance requirements and discussed a question raised by a Commissioner regarding the 95 percent and above payback percentages.

Ocean Enterprise 589 (OE589)/Ocean Downs Casino Licensing (continued)

Chairman Fowler asked if there were any public comments with regard to the licensing of OE589. There were none.

Chairman Fowler asked the Director to review the proposed elements of the order. Mr. Martino said he is requesting the Commission to issue a video lottery facility license to OE589 subject to the following conditions:

1. Complete, to the Commission's satisfaction, a controlled demonstration.

2. Provide the Commission with executed letters of credit to satisfy the requirement to provide performance and payment bonds.
3. Meet all facility design standards.
4. Ensure that all employees have completed the licensing and training process.
5. Comply with the facility security plan by successfully installing:
 - a. Man trap and employee entrance magnetic locks; and
 - b. A security window from cash cage to main bank.
6. Comply with facility surveillance plan by successfully installing:
 - a. A surveillance system to include coverage of all video lottery terminals and sensitive areas (as will be reviewed and determined by MSLA Compliance staff on or about December 16, 2010); and
 - b. Exterior surveillance on the outside of the facility capable of viewing all parking lots.
7. Receive final Certificate of Occupancy for the facility.

The above seven outstanding issues must be resolved before the final license can be signed to enable the facility to open to the public. Commissioner McGraw asked if the installation of the traffic light at the entrance to the facility is part of the conditions. Mr. Fasy, OE589, responded that is a State highway issue, and he believes the light is being installed shortly.

There being no further questions, Chairman Fowler said he would entertain a motion to issue OE589 LLC a license to operate a video lottery facility pursuant to the prior qualification findings by this Commission and subject to the conditions that were identified by the Director. Motion made by Commissioner McGraw, seconded by Commissioner Presley and motion passed by unanimous vote of the Commission.

Chairman Fowler said he would entertain a motion to delegate Mr. Martino the authority to countersign the operating license as Secretary of the Commission after all of the above conditions are satisfactorily met. Motion made by Vice Chairman Thomas, seconded by Commission Presley and motion passed by unanimous vote of the Commission.

Chairman Fowler offered congratulations to OE589 on behalf of the Commission.

STAFF REPORTS AND COMMISSION ACTION ITEMS

Director's Report – Stephen Martino

Mr. Martino said an updated sales and revenue report was provided to the Commission. Sales are down 1.06% and revenue is down 3.29% as compared to last year. Sales of Pick 4 are ahead of last year while sales of Pick 3 are behind. Mega Millions sales and revenues are both 44% behind last year. This is a reflection of the failure of the jackpots to roll. The

current jackpot is \$104 million, and advertising of that jackpot is currently airing. If there is no winner, it will roll to \$123 million for Friday's drawing.

The Lottery made its budget presentation to the Department of Budget and Management in November and is awaiting the outcome of that meeting. He will keep the Commission updated.

There was a Video Lottery Facility Location Commission meeting on December 13 in Annapolis, and PPE Casino Resorts presented its plans for opening a temporary facility at Arundel Mills by the fourth quarter of 2011 with 2,000 machines. It would operate for one year in the temporary facility, and the full facility should be completed by the fourth quarter of 2012 with all 4,750 machines. He suggested inviting PPE Casino Resorts to a Commission meeting to present its plans.

To date, Hollywood Casino/Perryville has generated \$21 million in total revenue. Of that, \$10.2 million has gone to the Education Trust Fund. Gross gaming revenue per machine per day in November was \$169, which is down from \$245 per machine per day in October. This will continue to be monitored for the next few months to see if a trend is developing. November and December are slow periods for the casino industry. Chairman Fowler asked if the report could be expanded to show the previous three months' activity at the casinos to help identify any trends in the activity. Mr. Martino said he will provide that expanded report. Commissioner Robertson asked if the \$169 per machine per day is in line with the projections. Mr. Martino responded the legislative study projection was \$210 per machine per day, and October and November averaged \$216 per machine per day.

Mr. Martino said the coin test at Ocean Downs is December 16, and Lottery staff will be present. VLT compliance agents have been hired and trained to work at Ocean Downs. The Commission was invited to attend the controlled demonstration on December 29 and asked that they contact Ms. Torosino so that staggered times can be scheduled to avoid an open meeting issue. Commissioner McGraw and Vice Chairman Thomas said they were interested in attending.

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

Ms. Smith said she is working on the Comprehensive Accounting Financial Report (CAFR). A copy will be provided to the Commission when it is available. It will be submitted to the Government Finance Officers Association for consideration of a Certificate of Achievement. The Lottery has received these certificates for the past five years.

She is working on the year-end close out to process the reconciling of the W2Gs for lottery winners and 1099s for lottery retailers. She continues to work with the Budget Analyst and should be hearing shortly when the budget hearings will be scheduled. Preparations are also taking place for the opening of Ocean Downs.

Commissioner Robertson asked why the percentage for small procurement spending is only 1.9%, as noted on page 7 of the report. Mr. Howells responded we do not have control

over the MBE spending for small procurements. All small procurements are solicited on E-Maryland Marketplace, and MBEs are able to respond as are other businesses. Since an MBE would be competing as a prime contractor, there is no preference given to the MBE. Mr. Howells said the data is incomplete this month because the MBE Coordinator will be out until January 3.

Creative Services – **Jill Baer, Director**

Ms Baer said the Cruise for Cash scratch-off tickets were printed over the weekend, and the Lottery is moving forward with production of the advertising element with the shooting of a commercial on December 15. The ticket will launch in late January. Holiday scratch-off tickets are doing well this year with a range of 45% to 75% sold. The Ravens Cash Fantasy scratch-off ticket is 90% sold with one \$1 million top tier prize remaining. The Lottery hopes to sell out the game by the Super Bowl.

The current jackpot for Mega Millions is \$104 million, and advertisements of the jackpot are currently airing. The Keno Sprinkler and Pick 3 Let It Snow promotions are continuing. These popular promotions have run before and had an impact on sales.

The Lottery is preparing to launch an all games promotion in February. This is a repeat of something that was done last year, which had a positive impact on sales. The Lottery's redesigned website is now up and running. The VLT portion of the website has a library of information available. She will give a presentation to the Commission at a later date.

The Communications Division has been promoting the Ravens Cash Fantasy game at various events and on-site at Ravens home games. Some upcoming January events include the Polar Bear Plunge and the Cruise for Cash kick-off. Ms. Everett and her staff also have been featured on the local news stations with gift giving segments promoting how lottery tickets make great gifts.

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

Mr. Gallagher said in addition to his work detailed in his submitted report, he is also working on the year-end close outs for the 1099s and W2Gs and getting ready for next year's files. He is involved in preparations for the opening of the Ocean Downs facility.

Procurement – **Robert Howells, Director**

Mr. Howells said his discussion item concerns an active procurement and award of a contract. He feels it would be appropriate to defer the discussion to an executive session.

Internal Audit – Michael Eaton, Internal Auditor

Mr. Eaton said this month he has been working on the Internal Audit Plan and revenue assessment for the Lottery and VLTs. He will be meeting with the Commission Audit Subcommittee on this week to review and discuss the plans.

Legal Unit – Robert Fontaine, Principal Counsel

Mr. Fontaine said the Commission needs to schedule a license revocation hearing for River Market for the January meeting. After the Commission approves the date, he will inform the licensee of the time and date of the hearing. The Commission agreed to hold both the regular monthly meeting and the revocation hearing on January 19 beginning at 11:30 a.m.

Mr. Fontaine said Baltimore City sued the Baltimore City Entertainment Group (BCEG), and BCEG countersued with respect to the rights to develop the Russell Street parcel. There is a Motion for Summary Judgment scheduled for 10 a.m., December 17. Judge Mills is assigned to the case. He will keep the Commission updated on this matter.

The Maryland State Board of Contract Appeals (MSBCA) issued a decision last week regarding BCEG's appeal of the Location Commission's rejection of BCEG's proposal. Copies of the decision were provided to the Commission. BCEG has appealed that decision to the Circuit Court. It will be sometime in May 2011 before the record is ready and the case is scheduled for the hearing before the court. The MSBCA agreed with the State's presentation that the Location Commission's decision was the equivalent of a rejection of all bids. This then required BCEG to show that the State's act was fraudulent. The MSBCA found that the Location Commission's decision was rational, well-reasoned and justified. They also determined the Location Commission was correct in deeming that BCEG's proposal was its initially stated application for 500 VLTs. Mr. Fontaine read a summary of facts of the MSBCA's decision. Re-issuance of the RFP is at the discretion of the Location Commission.

Mr. Fontaine presented the following regulation. COMAR 14.01.10.20 Identification Cards for Video Lottery Employees, Section D(3) currently requires the Commission to "invoice" an employer whose employee is issued a replacement identification card. This amendment would instead simply require the employer to reimburse the Commission without necessity of an invoice.

Chairman Fowler said he would entertain a motion to approve amended regulation 14.01.10.20D(3). Motion was made by Vice Chairman Thomas, seconded by Commissioner Presley, and motion carried by unanimous vote of the Commission.

Chairman Fowler said he would entertain a motion to permit Lottery staff to submit amended regulation 14.01.10.20D(3) approved today on both an emergency and regular basis. Motion was made by Commissioner McGraw, seconded by Commissioner Presley, and the motion carried by unanimous vote of the Commission.

Policy and Development – Paul Dorsey, Director

Chairman Fowler informed Mr. Dorsey that he, Vice Chairman Thomas and Commissioner Presley will be serving on the Commission's Legislative Subcommittee. Mr. Dorsey said as soon as any legislation is received he will set up a meeting with the subcommittee.

PUBLIC COMMENTS

There were no public comments made.

CLOSED SESSION

Chairman Fowler said pursuant to State Government Article §10-508(a)(7) and (14), he would entertain a motion to move to a closed session to consult with counsel to obtain legal advice and to discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal before a contract is awarded or bids are opened, specifically to discuss a potential award of the contract for televised Lottery drawings. Motion was made by Vice Chairman Thomas, seconded by Commissioner McGraw and motion carried by unanimous vote of the Commission. See attached Statement for Closed Meeting, pursuant to State Government Article §10-508(a) (Exhibit #5). The meeting moved to a closed session at 2:36 p.m.

In addition to the five Commission members present plus the two Commissioners on the phone, the following were present during the closed session: Stephen Martino, Gina Smith, Robert Fontaine, Jill Baer, John Gallagher, Michael Eaton, Robert Howells, John Mooney, Jennifer Kelley, Holly Knepper and Marie Torosino. The meeting returned to open session at 2:46 p.m.

Chairman Fowler announced that during the closed session, the Commission reviewed the procurement and negotiating strategy related to the Televised Drawings of Lottery's On-Line Games and Related Services (#2010-07) and consulted with legal counsel on these matters.

During the discussions, the Commission received a report from Mr. Howells on the staff recommendation which is to award the Contract for the Televised Drawings of the On-line Games and Related Services (#2010-07) to WBAL-TV 11. He asked if there was any further discussion. Hearing none, Chairman Fowler said he would entertain a motion to approve the Contract. Motion to approve made by Commissioner Boozer, seconded by Commissioner McGraw, and the motion carried by unanimous vote of the Commission.

The Contract will be presented to the Board of Public Works on January 5.

COMMISSION BUSINESS

Chairman Fowler said the Commissioners were provided with a schedule of dates for the 2011 meetings. He asked that they review the schedule and if there are any questions to bring them up at the January meeting.

DATE AND TIME OF NEXT MEETING

The next Commission meeting will be at 11:30 a.m., Wednesday, January 19 followed by a lottery license revocation hearing.

ADJOURNMENT

There being no further business for discussion, Chairman Fowler said he would entertain a motion to adjourn. Motion was made by Vice Chairman Thomas, seconded by Commissioner Presley, and motion carried by unanimous vote of the Commission. The meeting adjourned at 2:50 p.m.

Respectfully submitted,

Stephen L. Martino