

AGENDA

KANSAS RACING AND GAMING COMMISSION
10:00 am, Friday, February 12, 2010

AUDITORIUM A
Dwight D. Eisenhower State Office Building
700 SW Harrison, Suite 450
Topeka, Kansas

A. CALL TO ORDER

B. APPROVAL OF THE AGENDA

C. APPROVAL OF MINUTES

1. [Minutes of January 15, 2010](#)

D. CONSENT AGENDA

Items listed on the consent agenda are a variety of different contracts and items which are routine in nature. If requested by a Commissioner, an item on the consent agenda may be removed from the Consent Agenda and placed under Commission Items for further discussion and consideration.

1. Electronic Gaming Machines and Electronic Lottery Facility Games
 - a. [Staff Memo](#)
 - b. [Machines and Games Tested by GLI](#)

E. KANSAS LOTTERY COMMISSION REPORT

F. LOTTERY GAMING FACILITY REPORTS/ITEMS

1. Butler National Service Corp./Boot Hill Casino and Resort
 - a. [December 2009 Gaming Revenue Report](#)
 - b. [January 2010 Gaming Revenue Report](#)

G. COMMISSION ITEMS

1. Boot Hill Casino and Resort Internal Control Waivers/Amendments

<i>Commission Action:</i>	<i>Commission review and discussion</i>
Staff Presentation:	Charles LaBoy, Deputy Director Audit and Electronic Security, and Mike Deines, Director of Communications
Staff Recommendation:	Staff recommends approval
a. Staff Memo	

2. Amendment to Code of Conduct's post-employment restrictions

<i>Commission Action:</i>	<i>Commission review and discussion</i>
Staff Presentation:	Stephen Martino, Executive Director, and Patrick Martin, Chief Counsel and Assistant Attorney General
Staff Recommendation:	Staff recommends approval
a. Staff Memo	

H. PUBLIC COMMENTS

I. STAFF REPORTS

1. Executive Director
2. Deputy Director Administration
 - a. [Commission Meeting Calendar](#)
3. Director of Communications/Responsible Gambling

J. EXECUTIVE SESSIONS

1. Attorney-client communication
2. Background reports
3. Personnel

K. OTHER BUSINESS/FURTHER COMMISSION ACTION

1. Discussion, consideration and possible action regarding Kansas Entertainment LLC (northeast gaming zone) character and fitness background investigation and its contract with the Kansas Lottery Commission. This contract was recommended by the Lottery Gaming Facility Review Board on December 1, 2009.
2. Discussion, consideration and possible action on licenses
 - a. Boot Hill Casino – Level II Gaming Licenses
 - i. Brenda Davis
 - ii. Eddie Fitzgerald
 - iii. Kathleen Koehn
 - iv. Henry Marquina
 - v. Justin Meissner
 - vi. George Ross (tabled from 1/15/10)
 - b. Boot Hill Casino – Level III Gaming Licenses
 - i. Claudia Castelli
 - ii. Edgar Del Real
 - iii. Amy Durr
 - iv. Valerie McPhail
 - v. Brandi Murray
 - vi. Sylvia Suarez

L. ADJOURNMENT

MOTION, TABLE LICENSE:
(K.1.a-b)

Commissioner Braun (Falstad) moved to table approval of the following individual until the February 12, 2010, meeting:

- i. George Ross Cashier

Motion passed unanimously.

MOTION, DENY LICENSES:
(K.1.a-b)

Commissioner Falstad (Braun) moved to deny approval of the following licenses:

- i. Antonio Alarcon Surveillance
- ii. Tommy Dishneau Dealer
- iii. Joseph Perez Players Club
- iv. Terrance Sullivan Valet

Motion passed unanimously.

ADJOURN:

Commissioner Braun (McKenzie) moved to adjourn at 1:07 pm. Motion passed unanimously.

SUBMITTED BY:

William Falstad
Secretary

APPROVED BY:

Carol H. Sader
Chair

DRAFT

Kansas Racing and Gaming Commission

STAFF AGENDA MEMORANDUM

DATE OF MEETING: February 12, 2010

AGENDA ITEM: **Approval of Electronic Gaming Machines and Electronic Lottery Facility Games**

PRESENTER: Charles LaBoy, Deputy Director for Audit and Electronic Security

ISSUE SUMMARY: Listed in the consent agenda are 26 electronic gaming machine hardware components and electronic Lottery facility games that have been tested by Gaming Laboratories International and determined to be in accordance with our technical specifications as outlined in K.A.R. 112-110-1 (a). K.S.A. 74-8750 requires KRGC approval of all electronic gaming machines and lottery facility games.

COMMISSION ACTION REQUIRED/REQUESTED: Commission review, discussion and approval.

STAFF RECOMMENDATIONS: Staff recommends approval.

Manufacturer	File Number	ID Number	Version	Game Name
KONAMI GAMING INC.	SY-22-KON-09-04	2_WAPDBObjectsClient.jar	2.0.0.0	Lot-A-Bucks
IGT	MO-22-IGT-09-199	GT014-004-00701-02	AVP INSTALL	WILD BLUEBELLS
IGT	MO-22-IGT-09-199	TYPE014-004-00701-02	AVP TYPE PKG	WILD BLUEBELLS
WMS	MO-22-WMS-09-200	SSSG-000-1460	1460/H9.25	OPERATING SYSTEM
BALLY	MO-73-BAL-09-86	ASGDBL7317UI-01	N/A	DOUBLE BLAZING 7'S
IGT	MO-22-IGT-09-251	M6048F 2.15 138 2.02	2.15/2.02	N/A
IGT	MO-22-IGT-09-273	M6028F 2.25 138 2.02	2.25/2.02	MARS BILL VALIDATOR
MIKOHN	MO-73-MIK-02-02	HARDWARE	CL00273040	N/A
MIKOHN	MO-73-MIK-02-02	HARDWARE	CL34107500	N/A
WMS	MO-22-WMS-09-129	SSSG-000-1640	1640/H13.11	OPERATING SYSTEM
WMS	MO-22-WMS-09-145	DC35-000-1000C0	1000/H13.11	Madame X
WMS	MO-22-WMS-09-187	DC34-000-1010C0	1010/H13.11	Moon Rising
IGT	MO-22-IGT-09-255	GI014-001Q69-E004	AVP INSTALL	DIAMOND QUEEN
IGT	MO-22-IGT-09-255	GAME014-001Q69-E04	AVP GAME PACKAGE	DIAMOND QUEEN
WMS	MO-73-WMS-09-28	SSSG-000-1630	1630/H13.10	OPERATING SYSTEM
PROGRESSIVE GAMES	MO-08-PGI-08-01	CS000020	v2.14	N/A
SDS	SY-73-SDS-09-25	big.jar	N/A	N/A
SDS	SY-85-SDS-09-03	CMPDesktop.exe	N/A	N/A
SDS	SY-85-SDS-09-03	Bally.CMP.Players.dll	N/A	N/A
SDS	SY-85-SDS-09-03	Bally.CMP.Tools.dll	N/A	N/A
SDS	SY-85-SDS-09-03	POWER BANK	N/A	N/A
SDS	SY-85-SDS-09-03	POWER PROMOTION	N/A	N/A
SDS	SY-73-SDS-09-25	BIGDashboard.jar	N/A	N/A
SDS	SY-73-SDS-09-25	BIGService.jar	N/A	N/A
SDS	SY-85-SDS-09-04	\\sds floor	11.1.3	N/A
SDS	SY-85-SDS-09-04	\\sds ui	11.1.3	N/A

Lottery Gaming Facility Revenue*
Boot Hill Casino and Resort

	December 2009	YTD 2009
Electronic gaming machines	1,706,096.26	1,706,096.26
Table games	<u>283,896.50</u>	<u>283,896.50</u>
Total Lottery Gaming Facility Revenue	<u><u>1,989,992.76</u></u>	<u><u>1,989,992.76</u></u>
State Share 22%	437,798.41	437,798.41
Local Share 3%	59,699.78	59,699.78
Problem Gambling Share 2%	39,799.86	39,799.86
Casino Share 73%	1,452,694.71	1,452,694.71

*as reported by the Kansas Lottery's central computer system

Lottery Gaming Facility Revenue*
Boot Hill Casino and Resort

	January 2010	YTD 2010
Electronic gaming machines	2,669,166.76	2,669,166.76
Table games	<u>463,239.50</u>	<u>463,239.50</u>
Total Lottery Gaming Facility Revenue	<u>3,132,406.26</u>	<u>3,132,406.26</u>
State Share 22%	689,129.38	689,129.38
Local Share 3%	93,972.19	93,972.19
Problem Gambling Share 2%	62,648.13	62,648.13
Casino Share 73%	2,286,656.57	2,286,656.57

*as reported by the Kansas Lottery's central computer system

Kansas Racing and Gaming Commission

STAFF AGENDA MEMORANDUM

DATE OF MEETING: February 12, 2010

AGENDA ITEM: **Approval of Boot Hill Casino and Resort Internal Control Waivers/Amendments**

PRESENTER: Charles LaBoy, Deputy Director for Audit and Electronic Security

ISSUE SUMMARY: Boot Hill Casino and Resort has submitted the following waivers/amendments to their internal control plan that was approved by the Commission during the December 4th 2009 Commission meeting. Due to the confidential nature of this information staff will discuss these items during the executive session.

Waiver/Amendment #	Regulation/IC Reference	Staff Recommendation
BH48	260.010.02	Approval
BH56	200.190.04	TBD
BH57	160.060	Approval
BH58	112-110-1(a)	Approval
BH59	110.070.04.3.5	TBD

COMMISSION ACTION REQUIRED/REQUESTED: Commission review, discussion and action.

STAFF RECOMMENDATIONS: Staff recommendations listed above.

Kansas Racing and Gaming Commission

STAFF AGENDA MEMORANDUM

DATE OF MEETING: February 12, 2010

AGENDA ITEM: **Amendment to Code of Conduct's post-employment restrictions**

PRESENTERS: Stephen Martino, Executive Director;
Patrick Martin, Chief Counsel and Assistant Attorney General

ISSUE SUMMARY: The Commission approved its Code of Conduct on September 20, 2007 as one of its first formal actions in response to the Kansas Expanded Lottery Act. The Code's purpose is to ensure that the Commission and its employees conduct themselves "according to high ethical standards. The Commission's members, employees and agents are expected to discharge their duties with loyalty and in such a manner to as to promote and preserve public trust and confidence in the Commission and the regulatory process."¹ That Code has served its purpose well by often providing guidance to difficult ethical questions.

One provision in the Code, however, has proven to be problematic. Particularly, in light of the staff reductions that the agency was forced to encounter at the beginning of 2009, we wanted to revisit the Code's restrictive covenant to ensure that it is reasonably tailored to the agency's interests, Kansas law, and industry standard.

As it stands, the Code establishes a five year restriction on all KRGC commissioners and employees from working for or having a financial interest in "any licensee, applicant, their affiliates, key personnel or representatives."² That provision is broader than the restriction in KELA, which prohibits interests and employment with the Kansas facility managers and sister companies. K.S.A. 74-8762(c).

As a general rule, Kansas courts take a strict view of contractual restrictive covenants and will not enforce "unreasonable" provisions. The reasonableness of a restriction hinges on several factors, including the employer's interests, the burden on the employee, public policy, and the time and territorial limitations on employment. Under those factors, a five-year non-compete with no territorial restriction was determined to be an unreasonable and unenforceable part of a tax preparer's contract.³

Based on concerns about that section's enforceability, we investigated our sister states' restrictions. Both Indiana and Illinois rely on one year restrictions.⁴ And states often include waivers for good cause in their restrictions.⁵

¹ KRGC Policy 1-02 ("Code") at ¶ A.

² *Id.* at ¶ B.11.

³ *H & R Block, Inc. v. Lovelace*. 208 Kan. 538, 547, 493 P.2d 205, 212 (1972).

⁴ Ind. Code § 4-2-6-11; Illinois Code § 5-45.

⁵ Ind. Code § 4-2-6-11(g); N. J. Code § 5:12-60.

Therefore, we recommend changing the current restriction in the Code to one year, with a provision to allow for a good cause waiver. The proposed provision is as follows:

11. Restrictive Covenant

- a. Commission members, employees or agents shall comply with the post-employment restrictions in K.S.A. 74-8762. Those restrictions generally provide that, for five years immediately subsequent to the termination of the office or employment of the commissioner or employee, the commissioner or employee may not hold an interest in, be employed by or represent, appear for or negotiate on behalf of any person who was then submitting a proposal for a lottery gaming facility or racetrack gaming facility, or on behalf of any lottery gaming facility manager or racetrack gaming facility manager.
- b. In addition to the restrictions in K.S.A. 74-8762, former Commission members, employees or agents shall not for a period of one year after termination of their Commission appointment or employment engage in any employment or contractual relations with, or have any financial interest in, any gaming supplier licensee or its affiliates, key personnel or representatives.
- c. A Commission member, employee or agent may apply to the Commission in writing for a waiver to section 11.b, and the same may be granted upon a finding of good cause by the Commission.

COMMISSION ACTION REQUIRED/REQUESTED: Amendment to the employment restrictions in the Code of Conduct's ¶ B.11.

STAFF RECOMMENDATIONS: Staff recommends making the amendments in the Code of Conduct's ¶ B.11., as above.

February 2010 - January 2011

Commission Planner

Feb 2010						
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12 Commission Meeting

FEBRUARY

MARCH

12 Commission Meeting

APRIL

16 Commission Meeting

MAY

14 Commission Meeting

JUNE

11 Commission Meeting

Aug 2010						
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