

**INDIANA GAMING COMMISSION  
REGULAR MEETING**

**9:00 a.m., November 17, 1995**

**Auditorium  
Indiana Government Center South**

**PRESENT:** Commission members Alan Klineman, Chair; Ann Marie Bochnowski, Vice-Chair; Donald Vowels, Secretary; Thomas F. Milcarek; David Ross, M.D.; Robert W. Swan; Robert W. Sundwick; Staff members Jack Thar, Floyd Hannon, Kay Fleming, Frank Brady, Philip Beck, Jill Copenhaver, Janine Hooley, Cindy Dean, Pam Ayres and an audience.

**Call to Order and Roll Call**

Chairman Alan Klineman called the meeting to order at approximately 9:11 a.m., indicating that all Indiana Gaming Commission members were present.

**Approval of the Minutes of the October 17, 1995 Meeting**

The minutes of the October 17, 1995 Indiana Gaming Commission business meeting held in Hammond, Indiana, were unanimously approved on motion by Dr. David Ross, second by Bob Sundwick.

**Report of the Executive Director**

Executive Director Jack Thar reported that as of November 14, 1995, the Commission had received 27 applications for a supplier's license and recommendations for the issuance of temporary licenses to some of the applicants will be made during "**New Business.**"

**Updates on the Certificate of Suitability Holders**

**Gary**

The Army Corps of Engineers' permit has been issued. Construction is in full swing. The developers and the City of Gary did not meet the October 31, 1995 deadline established by Commission staff for the joint development agreement between the developers and the city. However, Mr. Thar reported, the failure to meet this deadline was not due to any irreconcilable differences but was due to other matters which have, at one point or another, prevented one or the other of the parties from being able to devote immediate resources to the reviews and the necessary discussions. That is not to say that there are no issues of concern, but rather that there

have been no dead ends; the developers have good faith that a development agreement will be forthcoming. The deadline set by staff did not carry any penalties.

### Evansville

The progress being made by both Aztar and the City of Evansville continues to be smooth, productive and accelerating. Aztar, Evansville and the Commission and Commission staff are devoting immense resources to the projected opening of Aztar's vessel, **The City of Evansville**.

The present schedule is as follows -- Monday, December 4, 1995 - a shake-down cruise operated by the Indiana Gaming Commission from 1:00 p.m. to 3:00 p.m. (Evansville time), utilizing play money and play tokens. During the course of the cruise, there will be certain events under the control of the Commission which will take place for observation and review purposes. On December 5, assuming the license is issued, Aztar will open in the early afternoon for the purpose of running live gaming for three to five shifts and will run till approximately 3:00 a.m., Wednesday morning, at which time it will again be closed down and the banks, cages and systems will be monitored. They will then be allowed to conduct what can be termed a "soft day" of gaming on Thursday, with the grand opening day on Friday, December 8. The Commission will be present for observation and review. The Coast Guard will be putting the boat through emergency drills on November 28. Chairman Klineman added that no real gaming will be taking place on the shake-down cruise. The boat may or may not leave the dock on this cruise.

Gaming Commission agents have been sealing all of the EPROMS and the Smart (Slot System Information) system will be tested next week. Executive Director Thar reported that much needs to be done before December 4.

### Rising Sun

In addition to Executive Director Thar's Rising Sun report on September 8, 1995, the Army Corps of Engineers' public hearing was held on Wednesday, November 15, 1995. Rising Sun's request to transfer ownership is part of the "**Old Business**" portion of today's meeting.

### Lawrenceburg

Indiana Gaming Company LP also remains as reported on September 8, 1995, with the primary update that they have leased a temporary vessel from Station Casino in Missouri.

### Introduction of IGC Staff Person

Executive Director Jack Thar introduced new staff person, Cindy Dean, who has been hired as the Gaming Commission's new staff attorney. Mr. Thar indicated that she has been extremely helpful in the rule-writing process.

Results of the November 7, 1995 Referendum

At the November 7, 1995 referendum in Clark and Floyd Counties, both counties rejected the gaming referendum. Mr. Thar reported the vote to be the following:

**CLARK** Yes - 11,813 - 45.62% No - 14,081 - 54.38% - **Rejected**  
**FLOYD** Yes - 8,361 - 42.29% No - 11,411 - 57.71% - **Rejected**

**COST: CLARK \$59,655.24**  
**FLOYD \$15,000.00**

**Old Business**

**Request of Rising Sun Riverboat Casino to Transfer an Ownership Interest to Hyatt**

Chairman Alan Klineman introduced Richard Schultz, Vice Chairman of Hyatt Development Corporation, who summarized the request of Rising Sun Riverboat Casino and Resort, LLC to seek Indiana Gaming Commission approval for the right to convert their debt position. They are presently acting as lender on the Rising Sun project and now request permission to convert that debt position into an equity position that will give them a minimum of 50% ownership and a maximum of 80% ownership of the resulting joint venture. Hyatt also has a management agreement with the ownership venture.

Upon Commission approval, Mr. Schultz added that upon the initial conversion of their debt position into equity ownership, they will own 50% and the existing owners of Rising Sun will own the balance, the other 50%. The ultimate ownership percentage will be determined during 1996 based on the election by the existing owners as to how much of the capital required they will contribute. It will be a 50-50 relationship until the second quarter of 1996, at which point an election will be made by the existing owners regarding their contributions. It will not be more than 80%.

As part of the Evansville Landing group, Hyatt has therefore previously been investigated by the Indiana State Police, Gaming Enforcement Section. Mr. Schultz reported that now the interest rate will be decreased by two percentage points annually.

**ACTION: Resolution 1995-38, A Resolution Approving the Request of Rising Sun Riverboat Casino and Resort, LLC. to Transfer an Ownership Interest to Indiana RBG, LP, an Affiliate of Hyatt Development** was unanimously granted on motion by Bob Swan, second by Ann Bochnowski. The resolution specifies the transfer of an ownership interest of not less than 50% and not more than 80% in Rising Sun Riverboat Casino and Resort, LLC to Indiana RBG, LP, an affiliate of Hyatt Development. The exact percentage is to be reported to the Commission within five days of the effective date of the transfer.

## **Request of Switzerland County to Limit the Number of Applications to the Existing Applicants**

Chairman Klineman introduced Switzerland County Counsel, Miss Brown, who summarized the majority view of the county that the number of applicants in Switzerland County remain with the two existing applicants, Pinnacle Gaming Development Corporation and Swiss Par-A-Dice, L.P. One applicant has a site above the Markland Dam and the other, below. Miss Brown expressed the county's appreciation that at this point in time they have not been rejected for a Certificate of Suitability. Their desire is that the selection process progress as quickly as possible. Mr. Thar added that although other potential applicants have made queries, none has advised the Gaming Commission staff of any intent to apply. He added that both Swiss Paradise and Pinnacle are putting together new packages.

Pinnacle spokesperson James Forbes indicated that he has been working closely with Switzerland County for the past thirty months. He also requested that the Switzerland County applicants be limited to the two already on file and the county will be best served by a quick selection process. In addition to the two sites previously mentioned, Mr. Forbes added another -- one that is currently privately owned and is thought soon to be under the control of one of the existing applicants. The remaining applicants for Crawford, Perry and Harrison Counties are going to present their strongest presentations. To require Switzerland County to repeat the earlier part of the process will only result in diverting, delaying and potentially diluting the efforts of the applicants and the community. Mr. Forbes questioned why place the additional burden on the county for a process that because of the land issues can only result in the same two applicants completing the process. If the Switzerland County process is kept closed, there will be nine applicants in four counties competing for two licenses. No one can suggest that that represents limited competition. Switzerland County's situation is unique and any precedent set by any Commission decision today will have little or no impact on counties now or in the near future, as there will be no licenses left remaining for issuance on the Ohio River.

Mr. Forbes indicated that on June 30, 1995, in awarding licenses to Ohio and Dearborn Counties, the Commission stated that its decision was in no way meant to prejudice Switzerland County's future efforts to secure a license. By requiring Switzerland County to go through an unnecessary process by creating uncertainty in the county as to who its applicants will be, by diverting its efforts away from the important tasks of working with its current applicants toward making the strongest presentations possible to the Commission, a decision to re-open the application process in Switzerland County will significantly prejudice its chances of success. Mr. Forbes added that these were the issues considered by the Switzerland County Council which led them to believe that limiting the process to the two existing applicants is in the best interest of the county. He requested limiting the process to the two that are currently pending and that Switzerland County be considered concurrently with the other three qualified for Ohio River counties.

Upon inquiry from Executive Director Thar regarding Pinnacle's presentation, Mr. Forbes indicated that Pinnacle has learned significantly from the previous round of hearings and their

presentation will be very different.

**ACTION:** With a Commission vote of 5-2 against a motion by Don Vowels, second by Ann Bochnowski, to open up the application process to additional applicants (with a deadline of December 15, 1995), the application process for Switzerland County will be limited to the two existing applicants.

### **The Question of Deadlines for Harrison, Crawford, Perry and Switzerland Counties**

Chairman Alan Klineman stated there are nine applicants for Harrison, Crawford, Perry and Switzerland Counties. There are two licenses left per statute. Of those nine applicants, five are in Harrison County, two are in Switzerland, one in Crawford and one in Perry. Next on the Indiana Gaming Commission schedule is the consideration of the applicants in Michigan City on Lake Michigan before going south to finish the remaining two licenses on the Ohio River. Mr. Klineman recommended that the applicants for Harrison County be considered by themselves and either grant or not grant a license in Harrison County and then consider Crawford, Perry and Switzerland together. There will then be four applicants in three counties vying for one license. Mr. Klineman advised this was a better breakdown than considering all nine applicants in four counties simultaneously. With site visits, etc., there would be too many variables to consider at one time.

Chairman Klineman indicated that the deadline for applicants to file their more-up-to-date material is between December 15 and the end of this year. Gaming Commission staff will set the exact deadline. The Gaming Commission would therefore be in a position by the middle of next year to consider the remaining two licenses on the Ohio River.

After considerable discussion regarding whether or not to divide up the remaining Ohio River counties into two separate sessions, Executive Director Thar indicated that in order to do them at one time, the commissioners will have to set aside a 10-day to two-week period in the spring for site visits and applicant presentations. If the counties are divided, then Harrison County could be heard one month, the others, the next. A decision could then be reached for both licenses. The disadvantage is that Harrison County applicants would have a longer period of time to add to their applications prior to the issuance of a decision..

Chairman Klineman requested that Indiana Gaming Commission staff set the deadline for the final filings between Christmas and New Year's. The Commission can then come back in January or later and make a final decision as to exactly which counties the Commission wishes to hear and when.

### **New Business**

### **The Question of Bond and Insurance for Aztar**

Independent Counsel to the Commission, Virginia Dill McCarty, introduced a two-page summary of the insurance and bond requirements that Indiana Gaming Commission staff and she recommend, with a more detailed outline under each of the types of insurance or bonds (see attached). The bond requirement authorizes the owner to put up a letter of credit, a surety bond, cash or negotiable securities. The Commission has received two letters of credit from Aztar and a third letter of credit that will be coming any day. The two letters of credit are in the amount of \$13,500,000. Eight million, two hundred thousand dollars is fully secured and \$5,000,000 is not secured except by the letter of credit of National City Bank of Evansville. The Gaming Commission felt that these letters of credit which have been in the City of Evansville's possession and were issued to them since August of 1994 (more than a year ago) were adequate to meet the statutory requirements with a few technical changes including adding the Commission as an obligee for the city itself, for the State of Indiana, and for other aggrieved persons, as the statute requires.

Ms. McCarty indicated that in an excess of caution and because the Gaming Commission staff has the right to fully secure everyone's interest, an additional \$2,000,000 in letters of credit or other acceptable security has been requested from Aztar, and they have agreed to furnish it by Monday or such other as directed by Commission staff. She recommended that the Commission accept National City Bank's Letters of Credit #101 and #102 which amount to \$13,500,000 as the statutory security required by Aztar to be posted before operations and that the Commission accept the \$2,000,000 letter of credit to be issued by National City Bank as proper security required by the Commission.

Executive Director Thar interjected that instead of a third letter of credit Aztar may choose to put on deposit, \$2,000,000 in cash, which is also acceptable under the statute. Both Letter of Credit #101 in the amount of \$5,200,000 posted by Aztar with the National City Bank of Evansville and Letter of Credit #102 in the amount of \$8,250,000 posted by Aztar in August of 1994 satisfy the statutory requirements of IC 4-33-6-9. The Commission staff has requested that the additional bond in the amount of \$2,000,000 be posted in the form of a letter of credit, cash or negotiable securities, or a surety bond.

Ms. McCarty indicated that the Commission is immune from suit in federal court. Under the Indiana Tort Claims Law, the Commission itself is also immune when it issues licenses. They have paid particular attention to protecting from any kind of marine liability. Coverage is being extended by Aztar to ensure that Commission members, employees and agents are covered.

In the ensuing discussion, Aztar attorney Jay Boyd explained that he is in the process of producing the actual policy language and has tendered binders for evidences of coverage per the requirements that are outlined. They are in the process of producing the actual policy language and completing to Ms. McCarty's satisfaction the requirements relative to the companies they are proposing to use as the insurance per the requirements.

**ACTION: Resolution 1995-42, A Resolution Approving the Bond that is to be Posted by**

**Aztar Indiana Gaming Corp.**, was unanimously approved on motion by Bob Sundwick, second by Bob Swan.

### **Temporary Suppliers' Licenses**

Deputy Director Floyd Hannon reported that in addition to the supplier ( to which at last month's meeting the Commission authorized the Executive Director to authorize a license), IEP Limited, from Scottsdale, Arizona, doing surveillance for Aztar, there are four additional suppliers requesting licenses. After a completed investigation, IEP Limited has in fact received their license.

Investigations have been completed on the following:

GDC, INC. of Mississippi  
Mikohn Gaming Corporation of Las Vegas, Nevada  
Olinger Distributing Company, Inc. of Indianapolis  
National Wine & Spirits Corporation

The preliminary background investigation conducted by the Indiana State Police, Gaming Enforcement Section, has indicated that these companies meet the criteria set forth in IC 4-33-7-3 for licensure as a supplier. The Indiana State Police, Gaming Enforcement Section is continuing to conduct a complete and thorough background investigation on these companies.

**ACTION: Resolution 1995-39, A Resolution Granting Temporary Supplier's Licenses to GDC, Inc.; Mikohn Gaming Corp.; National Wine & Spirits Corp.; and Olinger Distributing Co., Inc.**, was unanimously approved on motion by Tom Milcarek, second by Ann Bochnowski.

Deputy Director Hannon indicated that there are additional suppliers that the Indiana Gaming Commission is currently investigating. He proposed that the Executive Director be given the authority to grant temporary supplier's licenses to those companies necessary to supply Aztar Indiana Gaming Corp. with products prior to opening and have applied for a supplier's license, where a background investigation has been initiated by the Indiana State Police, Gaming Enforcement Section. This action is necessary because the Commission will not have a business meeting scheduled between November 17, 1995, and December 4, 1995, at a time when it can issue additional temporary supplier's licenses.

**ACTION, Resolution 1995-40, A Resolution Granting the Executive Director the Authority to Grant Temporary Supplier's Licenses**, was unanimously approved on motion by Don Vowels, second by Tom Milcarek.

### **Other Business**

## **Adoption of Forms for Use by Indiana Gaming Commission**

Chairman Alan Klineman reported that a number of forms have been drafted with additional support and input from the Indiana Department of Revenue. Mr. Frank Brady, Regional Audit Manager for the Commission, has been primarily responsible for the development of these forms.

Executive Director Thar presented a four-page form, entitled RG-1, which will be put on computer. The statute requires that the gaming and admission taxes be collected daily and filed via computer. They will be accessible to the Indiana Department of Revenue. Form RG-2 will be a monthly recapitulation form and will contain information needed by the Commission, as well as act as the monthly submission of the form to the Indiana Department of Revenue. Attached to it will be the hard copies of the RG-1 filed by computer on a daily basis. The remaining forms are informational forms requested by the Commission and include balance sheets, income statements, changes in stockholders' equity, changes in partners' or proprietors' equity, statements of cash flow, schedule of receivables and patron's checks, employment and payroll reports.

Additionally, Mr. Thar discussed two forms, Request for Felony Waiver and Denial of Occupational License Application, which staff would like the Commission to accept. He explained the felony waiver hearing process and decision. If the Commission finds in favor of the waiver, the individual may be eligible for a position on the riverboat. If the Commission denies the waiver, the individual may not work on the boat and that person, if he so chooses, may have the right to proceed before an administrative law judge and have that judge review the situation. It is not an overnight process and is not meant to be a guarantee that everyone with a felony will have that felony waived.

**ACTION:** Resolution 1995-41, A Resolution Adopting and Prescribing Various Forms for Use by the Commission, was unanimously adopted upon motion by Dr. David Ross, second by Bob Swan.

## **Draft Rules Hearing**

Chief Counsel Kay Fleming reported that additional draft rules are available for the public comment process on November 27, 1995. Additional rules may be adopted December 4.

## **Status of the East Chicago Injunction**

Ms. Fleming announced that the temporary restraining order in the East Chicago applicant hearing process has been dissolved.

## **Next Meeting**

The next meeting of the Indiana Gaming Commission will be Monday, December 4, 1995, at

9:00 a.m., in Evansville, Indiana. Chairman Klineman announced the location has not as yet been decided. (Since the meeting, it has been decided that the next business meeting will be held in the old post office, second floor, old federal courtroom, at 100 NW Second Street.)

**Meeting Recessed**

Chairman Alan Klineman recessed the business meeting at 10:56 a.m. indicating the Commission would resume with the Hammond deliberation process at 11:15 a.m.