

INDIANA GAMING COMMISSION
REGULAR MEETING

11:00 a.m. February 11, 1994 Conference Center
Auditorium Indiana Government Center South

MINUTES

PRESENT: Commission members Alan Klineman, Ann Marie Bochnowski, Gene Hensley, David E. Ross, Jr., Donald Raymond Vowels, Robert Sundwick (arriving late at 11:40 a.m.); Staff members John J. Thar, Kay Fleming, Judy Greene (arriving late), Floyd B. Hannon, Pam Ayres and an audience.

Call to order and reading of open letter to Robert Gilmore

Chairperson Alan I. Klineman called the meeting to order at 11:08a.m. with the reading of an open letter to Commission member Robert Gilmore, who has announced his resignation from the Commission; Mr. Gilmore has filed for political office in Porter County. Mr. Klineman indicated the Commission's great regret at losing Mr. Gilmore's counsel and indicated that if the Commission was in agreement a letter of appreciation would be sent.

Open letter to former Commissioner Gilmore

The open letter read as follows:

Dear Bob:

We, the undersigned members of the Indiana Gaming Commission (IGC), wish to publicly express our appreciation and thanks for the time you have devoted to the business of the IGC. While we wish you the best in your new endeavors, it is not without a feeling of regret as we will miss the friendly, cooperative and competent attitude you always displayed. It will truly be a difficult task to find a person with your high degree of character and integrity to fill your chair. With best regards for your future, we remain, (signed by the Chairman and remaining Commission members).

Approval of the minutes of January 11, 1994, meeting

The minutes of the January 11, 1994, meeting were approved as circulated on motion by Gene Hensley, second by David Ross, Jr.

Recess for review of documentation

Chairman Klineman called a 1/2 hour recess in order that Commission members be given an opportunity to read and evaluate documents submitted on both the Fred Collins, dba/ Fred Collins Gaming Company, and Mount Albany Grand Casinos pertaining to the acceptance or rejection of their respective applications. Adequate

time needed to be given for Commission review of the correspondence and documentation both in support of and against the acceptance of the two applications.

Fred Collins Gaming Company had asked to amend their application to apply for a site in Rising Sun, Indiana, instead of Gary, Indiana, and requested that their application fee be transferred. They had not submitted a second \$50,000.00 application fee by the deadline. Consequently, their application for Rising Sun remained un-filed at noon, Eastern Standard Time, February 2, 1994.

Mount Albany Grand Casinos had requested a special exception to extend the deadline for filing Part I applications with respect to East Chicago, Indiana. They wished to amend their application (Part I originally filed on September 14, 1993) from Floyd County, Indiana, docksite to one located in the City of East Chicago. They did, however, miss the deadline of noon, February 2, 1994, and the application was received in the offices of the Indiana Gaming Commission on or about 4:25 p.m. (Indianapolis time), February 2, 1994. At that time, Mount Albany representatives were advised that the Commission could receive, but not file, their application. The matter would have to be placed on the agenda for a formal decision by the Commission.

Commission meeting re-convened

Chairman Klineman re-convened the meeting at 11:40 a.m., calling for the report of the Gaming Commission Executive Director.

Report from the Executive Director

Executive Director Jack Thar reported the activities of the last month. The IGC was sued by a group of businessmen in Porter County and evidence was heard on January 27, 1994, in Porter County Superior Court, Valparaiso. A favorable decision to the IGC was issued on January 28, 1994.

The IGC met with the Army Corps of Engineers in Louisville on January 25 and will be meeting with the Army Corps of Engineers in Detroit on Wednesday, February 16 (previously scheduled for January 28, but cancelled due to bad weather) to discuss their requirements for navigable waters for riverboats. They have indicated an interest in addressing the IGC in the future and advising staff of their procedures for administering permits. The February 8 Coast Guard meeting in Louisville had to be reset. An invitation to attend Industry day in St. Louis on March 10, 1994, has been extended and includes a seminar on boat safety, licensing and other related issues. Deputy Director Floyd Hannon and Mr. Thar will be attending a meeting in Gary on February 12 from noon until 3:00 p.m. concerning MBE/WBE certification along with discussions concerning supplier licensing.

There were 52 independent filings of Part I of the Riverboat License Application by the deadline on Tuesday, February 2, 1994. Mr. Thar reported that 44 or 45 different entities applied for the ten licenses that will be issued. He indicated which applicants have applied and in what county (see attached).

Final Update on the investigative teams--The Memorandum of Understanding between the IGC and the Indiana State Police is in final draft stage, having been reviewed by both. It will be signed (probably next week) and training arrangements have been tentatively agreed upon between the Illinois Gaming Board and the Indiana Gaming Commission.

(Mr. Robert Sundwick arrived at this point.)

There were no questions regarding Mr. Thar's report.

Old business

Chairman Klineman announced that there was no old business.

New business

Items A, B and C on the agenda were moved so that Item A would follow B and C. Mr. Klineman indicated his gratitude that so many applications have been received.

B. Sequential Order of Consideration of sites for Owner License Applications

Discussion followed regarding the Gary Part II Application deadline - February 15, 1994, at noon - and the subsequent investigative stage of the process. The statute specifies that Gary be awarded the first riverboat license. Mr. Klineman indicated that the statute does not give the Commission anywhere to go after that and the Commission needs to decide on a schedule of licensing hearings. He related that Indiana is the first state in the country to have multiple applicants for given sites and the difficulty in determining the order. He read a proposed list of dates for licensing hearings. A synopsis follows:

1. City of Gary: Mid-July, 1994 (potential of 2 licenses)
2. Vanderburgh County: Mid-September to Mid-October, 1994 (potential of 1 license)
3. Dearborn, Ohio and Switzerland Counties: Mid-November to Mid-December 1994 (potential of 1 or more licenses)
4. 2nd and 3rd largest cities on Lake Michigan, jointly: Mid-January to Mid-February, 1995 (potential of 1 license to each)

5. 5th Lake Michigan license, open to all eligible locations (non-licensed applicants from the City of Gary, second and third largest cities; all applicants from any other location which has met the statutory prerequisites for licensing): Mid-March to Mid-April, 1995
6. Remaining Ohio River License(s), open to all eligible locations (all non-licensed applicants from Vanderburgh, Dearborn, Ohio and Switzerland Counties; all applicants for other locations which have met the statutory prerequisites for licensing): Mid-May to Mid-June, 1995 (potential of 1 or more licenses)
7. Patoka Lake: 1995.

Executive Director Thar read aloud Resolution 1994-4--A resolution setting forth the sequential order for consideration of riverboat owner license applications (see attached). After some discussion, the resolution passed unanimously on motion by Donald Vowels and second by Dr. David Ross.

C. Question of allowing amendments to the Owner License Application after the deadline for the submission of Part II of the application

Chairman Klineman pointed out that the applications need to be in final form before the Commission can proceed with the hearings and licensing process. Executive Director Thar read aloud Resolution 1994-5--A resolution adopting a policy governing amendments to Part II of the Indiana Riverboat Owner's License Application Form (see attached).

Discussion followed regarding various reasons for amending applications. Mr. Thar emphasized that the resolution states that only clerical corrections could be made to the Riverboat Owner License Application after the filing of Part II. After the deadline date for the filing of Part II, the applicant must submit a request to the Commission to make a non-clerical change, correction, deletion, or addition. Gene Hensley asked about the death of a partner. Would that amended change need Commission approval? Mr. Thar indicated that according to the resolution, this would be the case. Mr. Vowels emphasized that if a change is substantive, it must go before the Commission, and they can decide to accept it or not. Director Thar suggested that the word "substantive" be added in Section 3 of the resolution, entitled Procedure for the Submission of Amendments, and that it read: "After the deadline date for the filing of Part II of Riverboat Owner License Application, the applicant must submit a request to

the Commission to make an substantive amendment along with the exact substantive amendment the applicant wishes to have approved. The Commission shall then determine whether or not the proposed amendment to the application will be allowed."

Dr. Ross moved that this deletion and addition be made to Resolution 1994-5. The resolution was then adopted by unanimous vote after second by Ann Bochnowski.

A. February 2, 1994 deadline in relation to the requests submitted by:

1. Fred Collins dba/Fred Collins Gaming Co.
2. Mount Albany Grand Casinos, Inc.

Chairman Klineman explained that because a site may have only one applicant, that that applicant does not automatically receive the license. The same standards used in selecting from multiple applicants for a site will also be used. All applicants will be tested against what the Commission believes is in the best interest of the community and the State of Indiana. He indicated that Bob Sundwick had had an opportunity to review the material formerly reviewed by the rest of the Commissioners.

Jack Thar reiterated the contents of the reviewed folders, which included: a) a January 31, 1994 letter from Fred Collins to John J. Thar, Executive Director, IGC; b) a letter to Fred Collins from John J. Thar transmitted by fax; c) a letter dated February 8, 1994, from Alpha Rising Sun, Inc.; d) a February 9 letter from Fred Collins addressed to Mr. Thar; and e) a letter sealed in an envelope that was received after the deadline on February 9 from Mystic Rose Entertainment, Inc. regarding Fred Collins Gaming Company's attempt to move from Gary to Rising Sun (accepting the late letter is at the discretion of the commission).

Fred Collins Gaming Company requested amending its application to apply for a site in Rising Sun, Indiana, instead of Gary, Indiana, and stated its position for an application fee transfer. Director Thar had in turn advised Mr. Collins by fax to submit another application and fee if he wanted a transfer. The IGC attempted to make contact with Fred Collins on February 2 before the noon deadline, but was advised that its Indiana counsel was not available. (A second \$50,000 application fee was not in fact submitted before the deadline of noon, Eastern Standard Time, February 2, 1994.) Mr. Thar pointed out that Fred Collins still remains an active applicant for the Gary site. Correspondence from Alpha Rising Sun, Inc., and Mystic Rose Entertainment stated various objections to this requested transfer.

The Commission discussed at great length whether or not to accept the application without the second \$50,000 application fee. Some felt that the Commission should be more receptive; however, Director Thar responded that the Commission did receive a second application but that it had not been filed. He pointed out that Fred Collins knew clearly one week in advance of the deadline date of February 2, 1994, that their plan was unacceptable pursuant to the resolution, but that they clearly did not comply with the IGC regulation. He had indicated to them that the matter would be placed on the February Commission Meeting Agenda for a discussion and decision.

Executive Director Thar read Resolution 1994-3 (see attached). Chairman Klineman indicated that an affirmative action by the Commission requires a "yes" vote of four members; a tie or no vote of three or more members would defeat the motion. Gene Hensley requested additional language be inserted into Section 2 for clarity. Dr. Ross seconded. The Commission's vote was unanimous. Section 2 now reads as follows: Upon full consideration by the Commission, the February 2, 1994 submittal of Fred Collins dba/ Fred Collins Gaming Co. without the payment of the \$50,000 applicant fee for Rising Sun, Indiana (~~is~~) is not accepted by the Commission.

Mr. Thar recited the contents of the second packet of material the Commission was asked to review. It included a) a bound booklet stating Mount Albany Grand Casinos, Inc.'s 4:20 p.m., February 2, 1994 Request for Transfer of Part I of its Indiana Riverboat Owner's License Application from Floyd County, Indiana, to East Chicago, Indiana; b) a letter from their attorney establishing their position; c) two letters from United Citizens Organization in East Chicago asking that the application process for riverboat gaming licenses be reopened and extended an additional 30 to 60 days from February 4, 1994; d) a letter from Showboat Marina Partnership stating their position that the Commission should not grant Mount Albany's request for extraordinary relief to extend the deadline.

Director Thar explained that Mount Albany's legal counsel had made at 2:00 or 2:30 p.m., February 2, 1994, a last-minute decision to amend its application to an East Chicago docksite. He reminded them they had missed the noon filing deadline. At approximately 4:25 p.m. that same day, Mt. Albany's legal counsel showed up at the Gaming Commission offices with a check for \$10,000.00 and a request to change their docksite to East Chicago. He indicated that IGC staff would receive but not file the amended application; he would place their request on the agenda for Commission meeting action. This is clearly a deadline issue as opposed to an application one.

Another matter needs to be presented to the Commission. Mr. Thar indicated that Gamma International had applied for Rising Sun and submitted (by the noon February 2 deadline) 10 boxes of material, although each box was clearly marked with the notation, "Box _ of 11," indicating that Gamma International had applied for Rising Sun with 11 boxes. After a thorough investigation by Gamma's local counsel, it was determined that the box with the \$50,000 check had in fact been mis-sent to another location in another state. Gamma was contacted before noon and they indicated they would re-wire the \$50,000 and it did arrive in the Commission office by 2:00 p.m., February 2. Mr. Thar indicated that he subsequently received affidavits from both the bank and the airport attesting to the fact that the check had been cut and the box containing it had been mis-sent. It was out of Gamma's control.

It was also noted that the paperwork for Part I of the Riveria Lakefront Casino application for Gary was received before the expiration of the deadline. Due to an error on the part of the bank which was beyond the control of the applicant, the wire transfer was received a few hours after the deadline. Since the applicant had initiated all necessary requirements to effectuate the wire transfer prior to the expiration of the deadline, and the delay was not the fault of the applicant, the application was deemed timely filed.

There was a great deal of discussion revolving around whether or not to accept Mt. Albany's requested transfer of Part I of its Indiana Riverboat Owner's License Application from Floyd County to East Chicago, Indiana. Some felt that for the best possible economic development for the area, an exception to the deadline rule should be made. Others felt that Mt. Albany had plenty of time to timely file and that the deadline should not be extended for them. Bob Sundwick indicated that the Commission should accept the application because it was an opportunity to give the people of East Chicago another applicant. Chairman Klineman related that Mt. Albany knew on November 3 that their chosen location was not a viable place and they had a long time to decide where to move it and then to wait until 1 1/2 hours after the deadline to make their move.

Gene Hensley moved to accept the Mt. Albany Grand Casinos, Inc. application for East Chicago. Ann Marie Bochnowski seconded the motion. The vote was Ann Bochnowski, Gene Hensley, Robert Sundwick in favor, and David E. Ross, Jr., Donald Vowels, and Alan Klineman, opposed. There was a tie vote and the motion failed.

At this point in the meeting, some of the audience was very visibly upset, became very unruly, shouted slurs, and finally marched out of the auditorium.

Other Business

Ann Bochnowski asked the Commission to solicit an environmental review of the U.S. X site. It would be inadvisable to award a license for a site that was not feasible. Mr. Thar explained that in meetings with the Corps. of Engineers, the Commission staff will gather information regarding the Gary sites. Ann made some observations concerning the Buffington Harbor site.

Next Meeting

The next meeting will be held at 11:30 a.m. The originally announced date of March 4 was changed to the next Friday, March 11, 1994, so that the auditorium could be again utilized. It would not be available on March 4.

The Commission adjourned at 1:05 p.m. on motion by Bob Sundwick, second by Don Vowels.