

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 16-028

JAMES E. GORMAN
May 25, 2016

WHEREAS, James E. Gorman ("Gorman"), requested a hearing to contest the proposed disciplinary action initiated against him on November 18, 2015, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-15-337; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Gorman's request and the Hearing Officer has submitted the proposed Findings of Fact, Conclusions of Law and Final Order attached hereto (collectively the "Final Order") for approval by the Commission; and

NOW, THEREFORE, BE IT RESOLVED, that the Commission has reviewed the Final Order and hereby issues to Gorman a one (1) day suspension of his occupational license in the above-referenced case in the matter of DC-15-337; and

BE IT FURTHER RESOLVED, that this shall be considered a final decision of the Missouri Gaming Commission.

BEFORE THE MISSOURI GAMING COMMISSION

In Re: James E. Gorman)
)
) Case No. 15-337
License Number: 303326)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as "Commission") upon receipt of a letter dated December 9, 2015, making a request for a hearing by James Gorman (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated November 18, 2015. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on March 15, 2016 where the Petitioner and the Commission's attorney, Ms. Carolyn Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. On August 15, 2015, Petitioner was employed by Casino One Corporation ("Company") as a Poker Manager aboard the *Lumiere Place Casino and Hotel* ("Casino").
2. On August 15, 2015, Corporal Louis Amighetti ("Cpl. Amighetti") of the Missouri State Highway Patrol was informed by Security Officer Demetria Walker about a potential violation of the Minimum Internal Control Standards ("MICS") and the Casino's Internal Control Standard ("ICS").
3. On August 15, 2015 Cpl. Amighetti was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Cpl. Amighetti 's investigation and review of surveillance video recordings revealed the following:
 - a) Security officers were personally taking bad beat jackpot paperwork from the poker room to the jackpot hopper fill room and then taking possession of the jackpot to transport it to the poker room supervisor. Security personnel were not escorted by additional Casino employees, and were performing the transports independently.
 - b) The transport procedure described in a) above had been practiced by the Casino for several months, at least prior to July 2015.

- c) The standard procedure requires a Casino employee to transport the jackpot while being escorted by a security officer.
 - d) The Licensee admitted to unilaterally making this change to the procedure, contrary to the established MICS and the Casino's ICS.
5. At hearing, Petitioner testified that he has the authority to establish and change departmental policies and procedures. He admitted that he unilaterally changed the jackpot transfer process to omit non-security personnel from the transfer.
 6. Petitioner's actions in authorizing the improper jackpot transport procedure in violation of MICS and the Casino's ICS is injurious to the public health, safety, morals, good order, and general welfare of the people of the State of Missouri and discredits the Missouri gaming industry and the State of Missouri, and violates Section 313.812.14 RSMo. (2015), 11 CSR 45-10.030(1) and (7), the Commission's Minimum Internal Control Standards ("MICS") Chapter N, § 5.03, and the Company's Internal Control Standards ("ICS") Chapter N, § 5.03.

CONCLUSIONS OF LAW

1. "The Commission shall have full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to 313.850." Section 313.805 MO. REV. STAT. 2015.
2. "A holder of any license shall be subject to the imposition of penalties, suspension, or revocation of such license, or if the person is an applicant for licensure, the denial of the application, for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, morals, good order, and general welfare of the people of the state of Missouri, or that would discredit or tend to discredit the Missouri gaming industry of the state of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action . . . the following acts may be grounds for such discipline: (1) Failing to comply with or make provision for compliance with Sections 313.800 to 313.850, the rules and regulations of the commission or any federal, state, or local law or regulation." Section 313.812.14 MO. REV. STAT. 2015.
3. "The burden of proof is at all times on the petitioner. The petitioner shall have the affirmative responsibility of establishing the facts of his/her case by clear and convincing evidence . . ." Regulation 11 CSR 45-13.060(2).
4. "Clear and convincing evidence" is evidence that "instantly tilts the scales in the affirmative when weighed against the opposing evidence, leaving the fact finder with an

abiding conviction that the evidence is true." *State ex. rel. Department of Social Services v. Stone*, 71 S.W.3d 643, 646 (Mo. App. 2002).

5. "The state has a legitimate concern in strictly regulating and monitoring riverboat gaming operations. As such, any doubt as to the legislative objective or intent as to the Commission's power to regulate riverboat gaming operations in the state must be resolved in favor of strict regulation." *Pen-Yan Investment, Inc. v. Boyd Kansas City, Inc.*, 952 S.W.2d 299, 307 (Mo. App. 1997).
6. Under 11 CSR 45-9.060(3), violations of the Commission's Minimum Internal Control Standards ("MICS") by a Class A licensee or an agent or employee of the Class A licensee are deemed to be unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to administrative penalty pursuant to Section 313.805(6) RSMo. (2015) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
7. Under 11 CSR 45-9.060(4), violations of the Class A licensee's internal control system ("ICS") by a Class A licensee or an agent or employee of the Class A licensee shall be prima facie evidence of unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to discipline pursuant to Section 313.805(6) RSMo. (2015) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
8. The Commission's MICS, Chapter N, § 5.03 states, "A Security escort shall be required for the movement of all unredeemed tickets, chips, or cash of \$100 or more. . ."
9. The Company's ICS, Chapter N, § 5.03 states, "A Security escort shall be required for the movement of all unredeemed tickets, chips, or cash of \$100 or more. . ."
10. "The commission may . . . revoke or suspend an occupational license of any person . . . who has failed to comply with or make provision for complying with Chapter 313, RSMo, the rules of this commission, or any federal, state, or local law or regulation." Regulation 11 CSR 45-4.260(4)(E).

DISCUSSION

The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. In this case, Petitioner unilaterally changed the way jackpots were transferred to the poker room by omitting a non-security Casino employee from the transfer process. Petitioner argued that his position as Poker Manager gave him the authority to change the transfer process, and that only security officers are needed to effectuate a jackpot transfer.

Petitioner further argues that the only party necessary to *escort* a jackpot is a security officer and the jackpot itself.

Neither the MICS nor the ICS define the word *escort*, so its plain and ordinary meaning applies. Webster's Dictionary defines *escort* as "a person or group of persons accompanying another to give protection or as a courtesy." The Merriam-Webster Dictionary New Edition (2016). Giving the word its plain and ordinary meaning, an escort requires at least two parties. The MICS and ICS list one of the parties as a security officer, so the second party must necessarily be a non-security Casino employee. Therefore, the proper procedure for filling a jackpot in the poker room is for a security officer along with a non-security employee to transport the jackpot. Such a procedure ensures the integrity of the transfer and properly safeguards Casino assets.

The jackpot transfer procedure is dictated by the MICS and ICS, and is not a mere departmental policy or procedure. Licensee does not have the authority to unilaterally change, alter, or deviate from the MICS and ICS. Indeed, as a Level II licensee, the Licensee is bound to follow all of the gaming laws and regulations of the State of Missouri, including MICS and ICS.

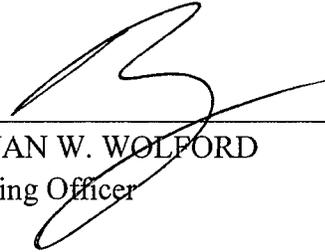
Petitioner's actions in authorizing the improper jackpot transport procedure in violation of MICS and the Casino's ICS is injurious to the public health, safety, morals, good order, and general welfare of the people of the State of Missouri and discredits the Missouri gaming industry. Petitioner did not meet his high burden of proof of clear and convincing evidence in showing that no violation occurred.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner is found to have violated Missouri law and is subject to discipline at the discretion of the Commission. The decision of the Commission dated November 18, 2015 to impose a **One (1) calendar day suspension** is affirmed as a proper and appropriate discipline.

DATED: _____

April 28, 2016



BRYAN W. WOLFORD
Hearing Officer