

**INDIANA GAMING COMMISSION
REGULAR MEETING**

11:00 a.m., July 8, 1994

**Conference Center Auditorium
Indiana Government Center South**

MINUTES

PRESENT: Commission members Alan Klineman, Chair; Ann Marie Bochnowski, Vice-Chair; Gilmer Gene Hensley, Secretary; David E. Ross, Jr.; Robert Sundwick; Donald Raymond Vowels; Thomas F. Milcarek; Staff members John J. Thar, Executive Director; Floyd Hannon, Kay Fleming, Judy Greene, Pam Ayres; from State Election Board, J. Bradley King, Staff Attorney; and an audience.

Call to order, roll call, introduction and oath of Commissioner Thomas F. Milcarek

Chairman Alan Klineman opened the meeting with an introduction and the administration of the oath of office to recently appointed Commissioner Thomas F. Milcarek. Mr. Milcarek was appointed an Indiana Gaming Commissioner by Governor Evan Bayh to replace Robert Gilmore. Mr. Milcarek is a life-long resident of LaPorte, Indiana, and is married with one daughter and one granddaughter. Chairman Klineman welcomed Mr. Milcarek to the Commission stating there is a full quorum; all commissioners are in attendance.

Approval of the Minutes of May 6, 1994 meeting

Upon motion by Ann Bochnowski and second by Robert Sundwick, the minutes of the May 6, 1994 Commission meeting were unanimously approved as distributed.

As hearings for the licensing of riverboats in Gary were originally scheduled to begin on July 12, Chairman Klineman remarked that initially there was not going to be a regular Commission meeting in July. However, because of the subsequent Porter County litigation, the Commission is not now in a position to go forward with the licensing hearings. The Commission is hopeful that this delay will be short-term and the hearings will proceed in the order that was originally scheduled.

Report of the Executive Director

Executive Director John J. Thar gave an update on the Porter County Superior Court's finding that a portion of the Riverboat Gambling Act concerning the referendum procedures was unconstitutional. On June 8, 1994, a hearing was held at the conclusion of which the court declined to stay the injunction but did clarify its prior order by allowing all business of the Commission to proceed except for the setting of hearing dates and the holding of hearings for licensing. On June 20, 1994 a request for stay was filed with the Supreme Court on behalf of the Indiana Gaming Commission and the Plaintiffs' response was filed on July 5, 1994.

On July 1, 1994, a request was filed by the Attorney General's office on behalf of the Indiana Gaming Commission seeking an expedited appeal and briefing schedule. Mr. Thar indicated that the implications of these actions will be discussed at the Executive Session following the public meeting.

The Indiana Gaming Commission staff have met with the Indiana Department of Natural Resources (INDR) and the Indiana Department of Environmental Management (IDEM) concerning the permitting procedures of each of these agencies and the need to disseminate information to the applicants. Consequently, Mr. Thar reported, meetings are occurring today, both preceding the public meeting, from 9:00-10:30a.m., for those applicants with an interest in Patoka Lake and Ohio River riverboat sites, and following, at 1:30-3:00 p.m., for those applicants interested in sites on Lake Michigan. Both INDR and IDEM are explaining their permitting processes. Time is provided for question and answer sessions.

Director Thar reported that weekly meetings, with additional contacts, are occurring between the staff and the investigative teams to primarily develop a final report on the Gary applicants. Staff is also meeting regularly with members of the SPEA team who are also in the process of finalizing their report with regard to the Gary applicants.

On June 28, 1994, a public hearing was held in the IGCS auditorium on the proposed rules adopted by the Commission at the May 6 commission meeting in Evansville. Twenty-one people signed the attendance sheet, constituting members of the media, representatives of riverboat and supplier applicants. Mr. Thar reported the transcript of the hearing should be completed by next week, allowing the Commission to take up the issue of the proposed rules at its next meeting, once the transcript has been disseminated for Commission review.

At the May 6, 1994 meeting, the Commission also authorized the entry of Nunc pro tunc amendments to resolutions 1993-7 (ex parte communications) and 1993-16 (adoption of Part II and PDF 1), for the purpose of authorizing nunc pro tunc resolutions for the purpose of extending each resolution beyond the July 1, 1994 expiration date. That directive has been carried out and copies of those nunc pro tunc resolutions are contained in each Commission folder.

Staff would suggest two items the Commission may wish to consider at its next meeting. By Monday of next week, copies of the Suppliers' license, Occupational License 2 and 3 application forms, will be made available. Upon review of the Commission, it is suggested that these application forms, with any subsequent Commission changes, be adopted at the next meeting.

Director Thar reported that both Crawford and Harrison Counties passed the May referendum; the setting of a deadline date for the filing of Part I of the Riverboat Owner's License Application should be discussed at the next meeting and a date set if deemed appropriate by the Commission.

Executive Director Thar concluded his report.

Old business

Chairman Klineman reported nothing in addition is pending at the present time.

New business

Report of the State Election Board, May 1994 referendum

J. Bradley King, Staff Attorney, Indiana State Election Board, presented a report on the May 1994 Riverboat Referenda. The report sets forth a number of items concerning both the official election results and campaign finance and expenditure information concerning the May 3, 1994 referenda. Although the campaign finance information reflects the reporting period that ended on April 8, 1994, some expenditures during the final month will not be included in the totals. With that proviso in mind, Mr. King reported that the records available to the Election Board indicate that with regard to the three counties conducting May 3 referenda, approximately \$350,000 was expended to win the approval of the riverboat referenda and approximately \$13,000 was spent in opposition to the approval of the referenda. Mr. King pointed out that on page 2 the final, official results of the May 3 referenda, as reported by the Circuit Court Clerk or Election Board of each county, are indicated for the three counties.

Crawford County

In Crawford County, 3,093 or 61% votes were cast "yes"; 1,969 or 39% were cast "no." The Crawford County referendum was approved.

Harrison County

In Harrison County, 5,855 or 51% votes were cast "yes"; 5,602 or 49% were cast "no." The referendum was approved in Harrison County.

Jefferson County

In Jefferson County the vote was 4,099 or 37% were cast "yes"; 6,855 or 63%, "no." The Jefferson County referendum was defeated.

Mr. King noted that page 3 of the report indicates the voter turnout by county and the election costs for each of the three counties, with a grand total of \$18,467.90 spent by local officials to carry on this referenda. The obvious difference between this and the November 1993 referenda is that this was also a primary

election.

In addition to the information in the report, Mr. King indicated that the State Election Board has received letters from the Gaming Commission staff regarding applicants for licenses in Gary and Vanderburgh County for their campaign finance division to conduct an investigation to determine if campaign finance reporting requirements have been complied with. They plan to start conducting these investigations during the coming week.

Ann Bochnowski questioned whether the IGC would receive copies of these investigations. It was indicated that they would.

Mr. King concluded his report.

Payment of election costs, November 1994 and 1995 referenda
Executive Director Thar read **Resolution 1994-16, A Resolution Governing an Applicant's Payment of the Costs of an Election to be Conducted November 8, 1994 or November 7, 1995 Concerning Whether Licenses to Permit Riverboat Gambling Should be Issued in a City or County** (see attached), beginning with Section 1--Scope.

Mr. Thar explained that this resolution is similar to the prior resolutions passed by the Commission with regard to the November 1993 referendum, as well as the May 1994 referendum. Because it is a general election, absentee ballots must be printed much earlier than in 1993, when the only issue on the ballot in those counties was the local question. Absentee ballots must be available no later than September 24, 1994, for the November 8, 1994 election, and no later than September 25, 1995, for the November 7, 1995 election. As a result, anyone wishing to apply in a county that has not had a referendum, must do so by August 1, 1994, or August 1, 1995.

Under Section 4, Procedure for Payment of Election Costs, an applicant must present to the county auditor of the appropriate county to comply with Public Law 277-1993(ss), Sections 133 and 134:

- (1) A copy of the application filed by the applicant with the Commission, stating:
 - (A) that the application has been filed with the Commission; and
 - (B) the county or city for which the application has been made.
- (2) that the application fee has been paid to the State of Indiana.

- (3) a cashier's check or certified check, in the amount that represents the difference between the cost to hold a special election and the cost to hold a general or municipal election (as previously determined by the county election board of that county), and made payable to "THE _____ COUNTY TREASURER."

An applicant will be considered to have paid for the cost of the special election within the county when the applicant has complied with presenting the above and the County Auditor provides the applicant with a copy of the quietus or receipt.

Mr. Thar read Resolution 1994-16 as it pertains to the payment of election costs within the same jurisdiction by multiple applicants. Before presenting items under Section 4, the applicant shall ask the county auditor whether any other applicant has previously presented items under Section 4 to pay the costs of the special election. If another applicant has previously paid the costs in accordance with this Resolution, the applicant may not present the items under Section 4.

After the special election is conducted, and before issuing a Riverboat Owner's License within the jurisdiction, the Commission shall determine whether a person has applied for a Riverboat Owner's License within that jurisdiction and the Commission shall issue an order requiring the person to forward a cashier's check or certified check to the applicant who paid the costs of the special election. The amount of payment equals the actual amount that represents the difference between the cost to hold a special election and the cost to hold a general or municipal election, divided by the number of persons who have applied for a Riverboat Owner's License within the jurisdiction. The Commission's order may prescribe a date by which the person shall make the payment to the applicant.

Gene Hensley asked how many counties to which this applies for the November 8, 1994, election. Mr. Thar indicated that there are three who are eligible on the Ohio River and two on Patoka Lake.

Upon motion by Dr. David Ross, second by Ann Bochnowski, that **Resolution 1994-16** be adopted as read by Director Thar, the resolution was unanimously approved.

Definition of City

IGC Chief Counsel Kay Fleming explained that there are certain references in the Indiana Riverboat Gaming statute to the term city or cities, specifically as far as to the application of admission taxes. For instance, one dollar of the admission tax is designated to the city on the Ohio River in each of the relevant counties.

Resolution 1994-17, A Resolution adopting the Results of the Federal Census and Adopting the Definition of a City for Purposes of IC 4-33 adopts the definition of the term city pursuant to IC 36-4-1-4, a municipality that has a population of two thousand (2,000) or more as of the 1990 federal decennial census or the most recent federal special census, special tabulation or corrected population count, and that qualifies as a city under IC 36-4-1.

Since there are some counties that do not technically have a city on the Ohio River, the Commission needed to look at exactly how that would be defined; Ms. Fleming indicated that this Resolution offers a solution. The statute specifically states that if there is no city contiguous with the Ohio River, then the county will receive \$2.00; otherwise, the city will receive \$1.00, the county, \$1.00.

Upon motion by Ann Bochnowski, second by Dr. David Ross, **Resolution 1994-17** (see attached) was unanimously adopted as read by Ms. Fleming.

Investigative Fee

Chairman Klineman explained that the staff has a resolution concerning the establishment of an investigative fee. The cost to investigate applicants exceeds the original application fee which was set at \$50,000 and has been filed by each of the applicants. An additional procedure is necessary to cover the cost of these investigations.

Executive Director Thar explained that additional costs have been incurred as a result of the delays caused by the pending litigation. A \$55,000 investigative fee per applicant is proposed in **Resolution 1994-18, A Resolution Establishing an Investigation Fee that the Applicants for a Riverboat Owner's License Must Remit to Enable the Commission to Complete the Background Investigations**. If the applicant has already paid a \$10,000 transfer fee, the investigation surcharge will be cut to \$45,000. If an applicant has filed for two jurisdictions, the applicant will only pay an additional \$5,000 for the investigations. Mr. Thar pointed out that excess amounts will be refunded. Applicants will be notified by mail to remit the \$55,000 investigation fee or the difference between the estimated cost of completing the investigation and the amount of the funds previously submitted by the applicant by a set date and time. Gary and Evansville applicants will be the first to receive notification.

If an applicant fails to remit the investigative fee, the investigative team completing the investigation shall not finalize the report regarding suitability for licensure nor submit the report to the Commission for consideration.

The additional investigation fee shall be remitted in the form of a cashier's check or a certified check made payable to the State of Indiana.

A person who has submitted more than one application for a Riverboat Owner's License may be required to submit a separate investigation fee in the full amount prescribed by Section 3 of the Resolution for each application.

Surplus monies will be refunded upon the earliest occurrence of one of the following events:

1. An applicant receives a Riverboat Owner's License pursuant to IC 4-33-6 and 68 IAC 2-1-5.
2. All licenses allocated for a dock site located on Lake Michigan or the Ohio River, whichever is applicable, have been awarded.
3. An applicant seeks and is granted leave to withdraw its application for a Riverboat Owner's License under IC 4-33-6 and 68 IAC 2-1-4(f).

Much discussion followed regarding the investigative fee for multiple applications and different sites. Upon a question by Bob Sundwick regarding how much of the original \$50,000 was earmarked for investigative costs, Director Thar indicated that all of the \$50,000 has to be used for investigative purposes.

What the \$55,000 estimated fee is based upon is a certain amount of overhead non-attributable to a given applicant. For instance, there are the set-up costs of the State Police unit. In setting up the investigative teams, the State Police assigned experienced Indiana State Troopers, as opposed to new inductees. There is the total cost of the replacement for each of the troopers. Director Thar indicated this is overhead that cannot be specified to one applicant.

In order to allocate this expense as fairly as possible, the IGC is taking all of the start-up costs and non-applicant, specified administrative costs and spreading that over an estimate of 40 applicants. During the time period that the investigative teams are investigating Gary only, the four Gary applicants will share equally in the non-specified, administrative costs of the investigation during that window of the investigation. Then, each will be billed separately for the time, overtime, travel, and other costs (long-distance phone bills, etc.) that are directly

attributable to that applicant. The best estimate the IGC has come up with is that it will cost \$105,000 per applicant based on 40 applicants. If the IGC stays at the present 38 applicants, that cost may have to go up. Mr. Thar indicated that based on data from other states, these figures are low. Missouri's costs in the first round of applicant investigations ran approximately \$240,000 according to Deputy Director Floyd Hannon. He also indicated that as applicants are investigated, they will be billed for this addition.

Upon motion by Bob Sundwick and second by Gene Hensley, Resolution 1994-18 (see attached) was unanimously adopted.

Request to amend Part II of the Indiana Riverboat Owner's Application, Lakeside Resorts, LLC

Director Thar explained that Lakeside Resorts, LLC is an applicant in Gary. On May 23 they requested that an amendment to Part II of their application be accepted. The basis for their request was that at the time of their original proposal they had acquired a vessel they had originally intended as not only a gaming casino but as a hotel. The boat became unavailable, thus requiring Lakeside to adjust their Part II Application. In addition, there were some other adjustments that were needed as the need to change the boat had a ripple effect throughout Part II of the application.

In checking with the investigation teams and the SPEA teams that the amendment at that time was very close to a critical cut-off point, Director Thar was advised that if these teams received the amended application promptly, they would be able to incorporate the new information and to hold to the present timelines. As a result, the proposed changes by Lakeside were in fact given to the investigative teams and to SPEA and they have in fact incorporated them into the reports they are preparing. As a result, staff are recommending to the IGC that Lakeside's request to amend Part II of their application be accepted. The alternative is, if Lakeside is not able to amend their application, they do not have a hotel or other economic development equal to a hotel for the Gary site, and from a statutory perspective, this puts them out of the running in Gary.

Director Thar read proposed **Resolution 1994-19, A Resolution Concerning the Request of Lakeside Resorts, LLC To Substantively Amend Part I and Part II of its Indiana Riverboat Owner's License Application by Amending the Proposed Economic Development Proposal** (see attached) from Section 3, Action On The Request For Amendment, forward.

Upon motion by Gene Hensley, second by Don Vowels, **Resolution 1994-19** was unanimously accepted.

Other business

Chairman Klineman indicated an Executive Session Meeting concerning pending litigation will follow the regular meeting of the Commission. Members of the Attorney General's office will also be in attendance.

Next meeting

The next meeting of the Indiana Gaming Commission will be on August 12, 1994, at 11:00 a.m. in the Indiana Conference Center South Auditorium.

The Commission adjourned at 11:45 a.m. on motion by Ann Bochnowski, second by Gene Hensley.