

California Gambling Control Commission
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**MINUTES OF APRIL 29, 2009
COMMISSION MEETING**

OPEN SESSION

1. Call to Order and Pledge of Allegiance.

Chairman Dean Shelton called the meeting to order at 10:01 a.m., and asked everyone to stand for the Pledge of Allegiance.

2. Roll Call of Commissioners.

Roll Call of Commissioners was taken with Chairman Dean Shelton and Commissioners Stephanie Shimazu, and Alexandra Vuksich present.

3. Audit of General Fund Fee Payments (Pursuant to Tribal-State Gaming Compact Section 4.3.1):
Pala Band of Luiseno Mission Indians

Deputy Director, Richard Ross indicated that the Commission staff recommended the Commission affirm the payments and interest allowed by the Compact as identified by the Commission staff in its letters of October 16, 2007 and November 29, 2007.

Chairman Shelton read the following into the record:

Government Code section 11126.4 authorizes the Commission to hold a closed session for discussion of matters involving trade secrets, nonpublic financial data, confidential or proprietary information, and other data and information, the public disclosure of which is prohibited by law or a tribal-state gaming compact.

Chairman Shelton asked the tribal representative, Howard Dickstein, if he planned to present to the Commission information deemed confidential pursuant to Tribal-State Compact Section 7.4.3.

Howard Dickstein, Counsel for the Pala Band of Luiseno Mission Indians, indicated that

initially a closed session was not necessary. Mr. Dickstein further indicated that as a result of the discussion it may become appropriate to go into closed session for a short time to discuss numbers and calculations.

Howard Dickstein, Counsel for the Pala Band of Luiseno Mission Indians, indicated that the tribe agreed with all the calculations provided by the Commission staff. The tribe's issue is when did Pala have a legal obligation to begin paying extra under the Compact for use of multi-stations if it continued to use multi-stations. Mr. Dickstein further indicated the Commission staff is indicating it took effect in 2004 when there was an advisory. Pala's position is that it took effect when Pala, as one of the tribes in the state, was informed of the Governor's Office determination on July 6, 2006. Pala began making payments on July 1, 2006.

Mr. Dickstein noted that the advisory issued by the California Gambling Control Commission (Bureau of Gambling Control) first in April, and then revised in June of 2004 was stated on its face to be informal, not a legal document. It was not a decision and as evidence of that there was no enforcement, audits or anything of the kind. By June of 2006 the Governor's Office made a decision. Mr. Dickstein read from page three of the June 9, 2006 decision, "that since initiation of the meet and confer process for resolution of this dispute, the tribes have had the benefit of more than a year or operation of multi-system terminals without licensure of the system terminals, and without payment of licensing fees into the Revenue Sharing Trust Fund for their operation". The letter according to Mr. Dickstein, basically ordered the tribes on penalty of a law suit, initiated by the State against the Tribes, to cease on or before August 8, 2006 operation of all terminals of any of the multi-terminal games. Mr. Dickstein further indicated Pala was paying these fees by this time and the letter indicates clearly that the period from up until that time resulted in a benefit for the Tribes and that they have operated multi-terminal devices without licensure and without payment, and that there was to be no action as long as they ceased operation by August 8, 2006.

Mr. Dickstein indicated it would be unjust and inequitable to confer what is called a "benefit" on some tribes, and then come back after the decision is made and request Pala to pay for conduct between 2004 and 2006 that was certainly no more inconsistent with their obligations than these other tribes. The State could have at any time taken action to file a lawsuit to cease and desist, or else cease Class III gaming and that never happened.

Evelyn Matteucci, Chief Counsel indicated that the letter dated June 9, 2006 did not indicate that as long as the Tribes ceased to use the machines by August 8, 2006, no action will be taken. Ms. Matteucci further stated that the letter just said the tribes had to cease operations of their machines by August 8, 2006. The letter indicated that the State of California still had the right to go after whoever was running these multi-station devices to collect whatever monies were owed to the State. Ms. Matteucci further referenced a letter from Peter Siggins to the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community dated March 25, 2005 where he indicated to them that invocation of the dispute resolution process, specifically in relation to the multi-station terminal device issue, and engaging in a meet and confer, is not a concession that a bonafide dispute exists. Ms. Matteucci quoted from a letter dated April 3, 2007 from the

Governor's Office to the Viejas Band of Kumeyaay Indians related to this same multi-station terminal devices issue that stated, "nothing is or was intended to suggest to tribes that they are not liable for amounts otherwise owed to the State for past or continuing operations," Clearly in this letter Andrea Hoch, Governor's Legal Affairs Secretary, indicated there would be liability for past or continuing operations of these multi-station terminal devices. A letter dated June 26, 2006 to the California Tribal Business Alliance from the Governor stated that, "the State's position on this matter continues to be that under the 1999 Compacts when multi-station devices are offered in a Gaming Facility each player terminal constitutes a gaming device within the meaning of the Compact." "

Ms. Matteucci referenced the federal court's recent decision in the Colusa case, which indicated that "under the unambiguous terms of the Compact each terminal of a multi-terminal game is to be counted as a separate gaming device for licensing purposes. Throughout the Compact the term Gaming Device is equated to or used interchangeably with the term terminal. Thus, in order to interpret each part of the Compact with reference to the entire contract, the only reasonable interpretation of the Compact is to count each terminal or player position as a Gaming Device."

Ms. Matteucci commented that if there were some ambiguity to the Compact as to the meaning of gaming device, then perhaps Mr. Dickstein would have a good argument. But when it is unambiguous and now there is a court decision saying it is unambiguous, it is difficult to see how the Commission cannot say that these fees are owed going back to when the Bureau of Gambling Control sent out an advisory in 2004. The Commission decided on February 16, 2005 that they were in agreement with the Bureau of Gambling Control's advisory and issued a decision on that date finding that each multi-station terminal device is an individual device and therefore, payment would be due for each one. An attempt by the Governor's Office at resolution of the issue with some kind of possible settlement was not a concession on the Governor's Office part that there was actually any other reasonable interpretation of the Compact. Based on that, the Commission feels they have a reasonable basis for seeking payment from Pala for the period from September 2004 to June 30, 2006.

CLOSED SESSION

Chairman Shelton called a closed session at 10:55 a.m.

RECONVENENE TO OPEN SESSION:

Chairman Shelton reconvened to open session at 11:09 a.m.

Chairman Shelton moved to charge Pala fees from February 16, 2005 (the date of the Commission's decision) through June 30, 2006, waiving interest and the other fees discussed in the original report. The motion was seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Shimazu and Vuksich voting yes, the Commission approved the motion.

PUBLIC COMMENT

There were no comments from the public during this portion of the meeting.

ADJOURNMENT

Upon motion to adjourn the meeting by Chairman Shelton, seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Shimazu and Vuksich voting yes, the meeting adjourned at 11:13 a.m.