

California Gambling Control Commission
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**MINUTES OF MAY 15, 2009
REGULATION HEARING**

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. A. Roll Call of Commissioners.

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

3. Preliminary Commission Review and Consideration of Regulation and Approval for Commencement of the Formal APA Rulemaking Process. Limitations on the Reopening of Closed Cardrooms (Adopt Title 4, CCR Section 12350)

- Criteria and procedures for applications to reopen closed cardroom pursuant to Business and Professions Code section 19963

No action was taken at the meeting at this time. The discussion was transcribed and the meeting transcript is incorporated into these minutes as Attachment A.

ADJOURNMENT

Upon motion to adjourn the meeting by Commissioner Shimazu, 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 11:40 a.m.

Received by Licensing

STATE OF CALIFORNIA
GAMBLING CONTROL COMMISSION

JUN 3 2009

CGCC

ORIGINAL

COMMISSION MEETING

California Gambling Control Commission
2399 Gateway Oaks Boulevard
Suite 100
Sacramento, California 95833
MAY 15, 2009
10:00 A.M.

Reported by: Desiree C. Tawney, CSR No. 12414



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APPEARANCES:

DEAN SHELTON
Chairman

STEPHANIE SHIMAZU
Commissioner

ALEXANDRA VUKSICH
Commissioner

JOY CALKIN
Staff Services Analyst

TERRI CIAU
Deputy Director Licensing Division

EVELYN MATTEUCCI
Chief Counsel

Public Speakers:

James Allen
Shannon George
John Nyhan
Tom Farrage
Stephen Waldman
Rod Blonien
Alan Titus
Marty Horan

1 BE IT REMEMBERED, that on MAY 15, 2009, commencing at
2 the hour of 10:00 A.M., at the California Gambling Control
3 Commission, 2399 Gateway Oaks Boulevard, Suite 100,
4 Sacramento, California, before me, DESTREE C. TAWNEY,
5 Certified Shorthand Reporter in and for the county of
6 Placer, state of California, the following proceedings took
7 place:

8
9 (The following proceedings were held on the record.)

10
11 CHAIRMAN SHELTON: Please rise for the Pledge of
12 Allegiance.

13 (Pledge of Allegiance.)

14 CHAIRMAN SHELTON: Roll call, please.

15 JOY CALKIN: Chairman Shelton?

16 CHAIRMAN SHELTON: Here.

17 JOY CALKIN: Commissioner Shimazu?

18 COMMISSIONER SHIMAZU: Here.

19 JOY CALKIN: Commissioner Vuksich?

20 COMMISSIONER VUKSICH: Here.

21 CHAIRMAN SHELTON: Mr. Allen, before you start, may I
22 wish you a happy birthday.

23 JAMES ALLEN: Thank you. Thank you very much. I was
24 hoping it would go unnoticed. 39 and holding. Been a
25 rough 39.

1 Good morning, Mr. Chairman, commissioners. For the
2 record, my name is James Allen. And I am the manager of
3 the Commission's Remote Caller Bingo Program.

4 Before we begin, I need to take care of just a little
5 housekeeping, go over some guidelines that should help keep
6 the presentation comments orderly.

7 First of all, if you have not already done so, we ask
8 all persons attending this meeting, even if you do not wish
9 to offer comments, please sign the register. This is
10 purely voluntary. We would appreciate having as complete
11 of a record as possible of all those in attendance.

12 In addition, if you do wish to testify, please
13 complete one of the cards located by the register and
14 either deposit it into the tray or hand it to me or one of
15 the staff. This will help us if we need to contact any of
16 the presenters or commenters at a later date.

17 The entire proceeding is being recorded. Persons who
18 wish to present comments are asked to come to the podium
19 and use the microphone to ensure that all comments are
20 recorded and entered into the record correctly.

21 Before you begin your comments, please identify
22 yourself by name and spell your last name for the record.

23 Ms. Shannon George will be presenting Agenda Item 3.
24 Thank you.

25 SHANNON GEORGE: Good morning, Mr. Chairman and

1 commissioners.

2 For the record, my name is Shannon George,
3 G-e-o-r-g-e.

4 Agenda Item 3 concerns the proposed regulation
5 regarding limitations on reopening closed cardrooms.

6 In your binders, there is a memorandum with staff's
7 recommendations and an overview of the proposed action,
8 proposed regulatory text and the public comments received
9 to date. These documents are also available at the back
10 table.

11 Staff is recommending that the Commission approve
12 initiation of the formal rulemaking process for these
13 proposed regulations. However, the Commission has the
14 option of requesting amendments be made to the proposed
15 text prior to the submission to OAL after consideration of
16 public comments made today and a discussion of the issues.

17 To summarize, as you know, Business & Professions
18 Code, Section 19963 prohibits the Commission from granting
19 a license to operate a gambling establishment that was not
20 licensed to operate on December 31, 1999, unless an
21 application to operate that establishment was on file with
22 the Department of Justice prior to September 1st, 2000.

23 Some history. The Commission staff held two public
24 workshops in 2008 that included significant discussions
25 surrounding the issues associated with the implementation

1 of 19963.

2 The proposed regulation before you would establish a
3 new section in Chapter 6 that will provide a process for
4 the submittal and hearing of applications to operate a
5 closed cardroom that is eligible to reopen under the
6 provisions of Business & Professions Code 19963.

7 The key elements of the proposed regulation would
8 limit the ability to apply for a state gambling license to
9 the person that held the license to operate the card room
10 as of December 31, 1999; would require affirmation of local
11 support in the form of resolutions and signed statements
12 from the local governing body and the chief law enforcement
13 officer of the jurisdiction; would require an economic
14 feasibility study to demonstrate the applicant has
15 sufficient resources to make the gambling establishment
16 viable and to comply with all regulatory requirements and
17 tax laws.

18 And we require the applicant to pay for a certified
19 public accounting firm with forensic accounting experience
20 to conduct the financial background portion of the
21 background investigation in consultation with the Bureau of
22 Gambling Control.

23 A reopened cardroom would have to be located in the
24 same local jurisdiction in which it was previously licensed
25 to operate.

1 CHAIRMAN SHELTON: Thank you. I want to take off on a
2 different tact this morning. I want to give you my line of
3 thinking right up front and allow you to rip it apart. I'm
4 not speaking for any of the commissioners, just speaking
5 for myself and what I believe. And I'm not saying I can't
6 be challenged or change my mind but on the surface of
7 things, we see only licenses in existence or on file with
8 the Bureau after December 31, 1999 should be considered.

9 If a license is abandoned after that date, there is no
10 invested right by the person or organization or members who
11 held that license. That is my opinion.

12 Should there be a request to a local jurisdiction for
13 an abandoned license and approval of the local
14 jurisdiction, then the person or persons making that
15 purchase would apply to the State for consideration of
16 being licensed after they've gone through the process at
17 the local level.

18 I think there has to be some -- something in the
19 regulations for natural disasters, fires, death and
20 consideration to be given to allow a period of time for
21 rebuilding or legal processes. But I think it should be a
22 limitation of that time.

23 And I think we should have some reasonable insurance
24 that that cardroom is going to be reopened. It's going to
25 be five years down the road, 12, 24, whatever we can come

1 to an agreement that we're looking at.

2 And I would expect something in the regulation to
3 protect from one cardroom buying another cardroom's license
4 that's been laying there dormant for a while where a
5 disaster has occurred to cause a monopoly to happen in that
6 particular jurisdiction. In other words, buy the license.
7 Pay the fees. And you continue the operation of the
8 cardroom they own in that jurisdiction and not allow the
9 other cardroom to ever be opened for business. So we would
10 eliminate competition by doing that.

11 I see the flaws that I observed that this could
12 happen. I don't know. I'm not set on the amount of time.
13 And I've seen information given and comments made where it
14 appears some people still believe a licensed purchased and
15 that person owns it forever. I -- that is not my
16 conclusion. I just don't agree with that. I think if you
17 abandon a license, you abandon the license. If I owned a
18 liquor store and I abandon the liquor store, I don't
19 maintain the ABC license forever. Somebody else can come
20 in. Free competition.

21 And if a license was not in existence prior to the
22 date that the legislators gave us, then there is no sense
23 going back and looking at that.

24 That is a pretty narrow opinion of mine that I put
25 out. But I think it is only fair to you what I'm thinking,

1 where I'm coming from. Then it is up to you to convince
2 the rest of the Commission what other means or ways you see
3 to get us to where we need to get.

4 I think I surprised my staff, too, so don't feel bad.
5 Commissioners?

6 COMMISSIONER SHIMAZU: I am waiting to hear the public
7 comments.

8 COMMISSIONER VUKSICH: Me, too.

9 CHAIRMAN SHELTON: Do we have any direct order or just
10 freelancing?

11 Anybody like to public comment, please, come forward.

12 JOHN NYHAN: Thank you. Good morning, Mr. Chairman,
13 commissioners.

14 My name is John Nyhan, N-y-h-a-n. I am appearing here
15 today on behalf of my client, Tom Farrage, who seeks to
16 reopen a cardroom in Blythe that has been closed for a
17 number of years.

18 Thank you, sir, for your initial comments. It will
19 help me frame my comments.

20 First, we had submitted written comments to the effect
21 that the recommendation of the staff that you adopt a rule
22 limiting reopening of the cardrooms to the original
23 licensee associated with the cardroom, we think, is too
24 restrictive and does not take into account the unique
25 circumstances that exist in Blythe, California, an

1 isolated area far from any other gaming competition where
2 Mr. Farrage has been working for a number of years with
3 local authorities to obtain approval for the reopening of
4 this cardroom, where he would provide competition to the
5 one existing cardroom in Blythe and he would provide
6 economic stimulus to an area in great need of redevelopment
7 in downtown Blythe.

8 Mr. Farrage's family has been there since the 20's.
9 He owns a number of the properties in downtown Blythe. He
10 will explain to you what redevelopment has taken place and
11 what his project, how his project would provide economic
12 stimulus and restore a historic block in downtown Blythe.

13 What we are urging is that you adopt Alternative C
14 which was among those alternatives considered, which would
15 allow a successor-in-interest to take over an abandoned
16 license.

17 Mr. Figueroa, the holder of the license, is 79 years
18 old. Mr. Farrage has been working with him for a number of
19 years to redevelop the downtown area in Blythe. And we
20 believe that if you were to -- you don't need to abandon
21 entirely your proposed Alternative D that would restrict a
22 license to the original holder but we urge that you
23 consider creating an exception for the situation where a
24 successor-in-interest is proposing reopening of the
25 cardroom that would provide economic stimulus and historic

1 preservation of a significant resource in Blythe.

2 So we think that you could do this without opening the
3 gates wholesale to an expansion of cardroom gaming or
4 competition for existing gaming facilities in the state.

5 There are several advantages to that. It would
6 encourage -- there is the social benefits, providing a
7 place for folks who like to play poker to get together in
8 downtown Blythe in an attractive surrounding where they can
9 enjoy one another's company.

10 We don't believe allowing a successor-in-interest to
11 apply to reopen a cardroom would violate the statute. The
12 owner of a cardroom can sell the name, the fixtures, the
13 equipment, the business, goodwill, the exclusive rights to
14 operate the business. Condition: On approval of obtaining
15 a State gaming license.

16 That is what has happened in Mr. Farrage's case. He
17 has worked with the City, has gotten approval from the City
18 manager, worked with all of the appropriate authorities,
19 redeveloped the block. He'll show you what he has got
20 there.

21 And we believe that given the unique circumstances of
22 this case where you have a successor-in-interest who has
23 been involved with the community, worked with the
24 community, redevelopment authority, made improvements and
25 already invested in improvements that are consistent with

1 the historic guidelines they've adopted.

2 This narrow exception is something we think you should
3 consider.

4 I think Mr. Farrage would like to explain his project
5 to you.

6 TOM FARRAGE: Thank you.

7 Commissioner Sheldon and other commissioners, my name
8 is Tom Farrage; F, like in Frank, a-r-r-a-g-e.

9 I am not sure how to explain to you how -- how
10 small -- explain to you the town of Blythe, how it is
11 isolated. It a small town when you drive through but at
12 the same time I see the town has been very good in terms of
13 helping the State. They give water for the Valley and from
14 the Valley they -- they help farrow the crops in order for
15 LA to have more water. They have had -- when my father was
16 mayor, they adopted a prison when other cities did not want
17 them in their backyard.

18 And about myself, we grew up in a small town, moved to
19 the city and became -- and owned an architectural firm and
20 now wants to go back and give meaning to properties his
21 grandfather bought in 1929. His father purchased more.
22 And now I own partially -- we ended up owning pretty much
23 almost the entire city block of Main Street -- Old Town
24 Main Street and our other partners in -- other owners,
25 other major owner is the City of Blythe.

1 Early on in 2003 when I was chosen to design the new
2 Appleby School, which was a great honor to go back and
3 design a school. I went to kindergarten and first grade
4 there. I became more involved ~~in the~~ architectural
5 endeavors. And I went to LA and learned how to be an
6 architect. I always used Blythe as an -- as a study guide.
7 I understood the problems that were -- I understood the
8 people, the problems, the issues that were happening in
9 this isolated town.

10 Quite often when I came to Sacramento, Office of
11 Public School Construction, I was told how Blythe was
12 always being shortchanged on their schools.

13 I learned -- I decided to make a genuine effort and to
14 attend workshop meetings. One particular was hosted by
15 Senator Ducheny. It was a workshop meeting asking the town
16 to help themselves to create a partnership with the public
17 and private partnership. At the end of that meeting the
18 City adopted more workshops and issued a bond to create a
19 beautification project, which they did and talk to
20 different landowners to help with that endeavor. After
21 that they issued a booklet called the "Design Guidelines"
22 around 2004.

23 At that point I started documenting the old buildings
24 on Main Street. I realized after taking off the old
25 facades it was beautiful facades underneath. We started

1 documenting not only our buildings but buildings that were
2 owned by other communities -- community properties.

3 We -- part of that -- part of the vision was to
4 revitalize Main Street and implement a use, which was
5 historic use, which is the old cardroom to be put in the
6 old bank building. The cardroom had been in existence for
7 well over 70 years. It just recently closed down less than
8 four years ago, 2004.

9 This revitalization effort has not gone without
10 counsel or many meetings with City officials. We met with
11 the mayor, the redevelopment agencies. We realized there
12 was a lot of upgrades that needed to be done.

13 After applying for the license and initially being
14 approved for the local gaming license we started
15 revitalization efforts. We took off many layers of
16 asbestos on the roofs, put energy efficient roofs on the
17 buildings on the Main Street properties, structural
18 upgrades, plumbing upgrades, mechanical upgrades.

19 We had our counsel which, you know, suggested that we
20 were not going against the moratorium for applying for a
21 State gaming license.

22 All has been approved. There is great support in the
23 city of Blythe for this endeavor. Drawings have been
24 drawn. And the infrastructures have been completed under
25 permits.

1 At this time the vision started to catch on. People
2 supported, as you can see in the documentation. The effort
3 had been started and local approval has been given.

4 We do have one other cardroom in town. Whenever
5 becomes -- and he actually rents from one of my properties.
6 But there is a great dissatisfaction simply because
7 whenever there is a monopoly, there is no competition. The
8 owner -- the existing owner feels he can do whatever he
9 wants.

10 The game has dwindled down to maybe two or three
11 nights a week. There are people -- you'll see in some of
12 the paperwork and letters of support -- who have been
13 gambling on that street for 70 -- 60, 70 years. They
14 gambled with my grandfathers, great uncles.

15 My great uncles -- my great uncles were the first ones
16 in the 1940's who started this cardroom. It changed hands
17 a few times. But since then I think it would be very
18 unique and to be able to put this Old Town Main Street back
19 together again.

20 We -- I am not sure what else I can put in this
21 property, what other program -- what other historic program
22 I can put in the property.

23 Blythe is actually closing down Main Street. It is
24 very unfortunate. We're all in a situation of economic
25 distress. But I feel that this would give the spark or the

1 incentive for other town's members to clean up their
2 buildings, as per our original workshop endeavor.

3 My architectural firm has pro bono historically drawn
4 up other buildings that we don't own. We have given
5 assurance once we get this project underway, the final part
6 of it, that they will jump on the bandwagon.

7 Right next door is the Elks Lodge right down the
8 street.

9 CHAIRMAN SHELTON: I hate to interrupt you, sir. I
10 really appreciate what you're doing but you're not applying
11 for a license today. We're doing regulations.

12 TOM FARRAGE: Yes.

13 CHAIRMAN SHELTON: And you've done some outstanding
14 work. You have a lot to be proud of but if your comments
15 from now on could be focused on your opinion of the
16 regulation and what they should be like.

17 TOM FARRAGE: I understand. I am just here to urge
18 the Commission to allow me to continue. It is as simple as
19 that.

20 I put genuine effort into that. I was obviously
21 shocked when I read on your website I was not allowed to
22 apply for the license. I have very little else to say
23 other than that.

24 CHAIRMAN SHELTON: You did very well.

25 JOHN NYHAN: You want the successor --

1 TOM FARRAGE: I would like you to please adopt the
2 successor-in-interest, make an exception, especially in an
3 area of hard economic -- where I could create economic
4 stimulus. And I like to point out we do have local
5 approval in place.

6 CHAIRMAN SHELTON: Commissioners? Questions?

7 COMMISSIONER VUKSICH: No.

8 CHAIRMAN SHELTON: Thank you very much. Appreciate
9 it.

10 Next.

11 STEPHEN WALDMAN: Good morning, Mr. Chairman. I -- my
12 name is Stephen Waldman from Buellton, California. I'm
13 here representing myself as a successor-in-interest to a
14 previously closed cardroom in San Luis Obispo. I
15 appreciate --

16 CHAIRMAN SHELTON: Please spell your last name.

17 STEPHEN WALDMAN: W-a-l-d-m-a-n.

18 CHAIRMAN SHELTON: Thank you.

19 STEPHEN WALDMAN: I appreciate your opening comments
20 of flexibility. I was under the impression that this was
21 an A, B, C, D and this was it.

22 And I prepared comments to on -- for
23 successor-in-interest basically dismissing the reasons for
24 not doing it and how much better successor-in-interest
25 truly is for private parties affected, the citizenry as a

1 whole in the state of California.

2 Two things on the -- on Item C that the State gives us
3 reasons for not adopting that. One is the negative social
4 impact. And in that regulation they ask -- they state to
5 see below stated below. If you go below, it's just
6 repetitive of what they said. In fact, there was a study
7 done by Dr. Thomas Gale Moore from the Hoover Institute,
8 Stanford University 1998 specifically on cardrooms and
9 crime in California. And I have a copy of it here. And he
10 states -- it is an empirical study, very thorough research
11 from Hoover Institute. He said at the end of the very
12 first paragraph: The results show that crime is unrelated
13 to legalized gambling. You know, it is related more to
14 other issues but not to legalized gambling. It goes
15 through a very detailed -- I'm not a social scientist or
16 researcher. He goes through a very detailed research. Not
17 only that, when explaining the comments -- there are other
18 sides to that issue -- he empirically shows where people
19 are taking the opposite side are wrong. The comments are
20 purely anecdotal. For instance, even in my case where I
21 have already started the process of trying to apply for a
22 license, I applied and I was not accepted by the Commission
23 pending -- they made a policy determination.

24 I have gone through -- I bought successor-in-interest
25 rights. I've gone through the local process in San Luis

1 Obispo. It took me eight months. You have to go through a
2 citizen's advisory council, law enforcement questioning,
3 the Planning Commission. It is very detailed. A
4 Conditional Use Permit, which is a very thorough process.

5 And the local community made the determination after a
6 lot of investigation that, yes, you meet the standards. It
7 is not the business -- the cardroom business that is
8 negative. Like any business, it is how it is operated.
9 Does not matter what the business is. It's the clientele
10 you allow in.

11 Just last night coming in to town, I just for the heck
12 of it went down to Capitol City, not far from here. The
13 place was like Cheers, very friendly, open place. I was
14 astounded. I thought it was great, nothing -- just a sense
15 of welcoming.

16 And card clubs are a center of social activity. They
17 provide jobs, good -- each card table is with -- I been in
18 the card business over 20 years, everything from dealing to
19 a manager in Las Vegas, native American casinos. Each card
20 table is worth about four -- a little over four jobs as far
21 as a dealer, talking another job as far as supervisory, the
22 ancillary jobs that they provide businesses and traffic and
23 it is a center of social activity. It is a round table,
24 just the greatest format in the world.

25 I mean, it brings people together. It is a -- defies

1 all races, ages and everything. And I just think limiting
2 competition -- and it is the competition that drives
3 businesses that make -- forces other businesses to provide
4 a better service. And to limit that through restraint of
5 trade, which I believe is discouraged in the California
6 either Constitution or government code of law without good
7 reasons is -- does not make sense, especially in these
8 times. Creating jobs is most important. I can't think of
9 a better deterrent to crime than giving somebody a job,
10 helping along those ways.

11 And that is -- I mean, that is pretty much it as far
12 as I think in making the process as open and fair.

13 When we originally applied and spent money I was going
14 under 19963 which does not state -- there is nothing in the
15 law that states I couldn't apply, that I couldn't start the
16 process. I understand the need for regulation and that
17 with the closures of cardrooms that you have to have some
18 but I would think to make it as open as possible or not to
19 limit the amount of people who can apply but let the local
20 community -- regardless of what the regulations are, if the
21 local community does not want it, it is not going in. Who
22 better knows the needs of the community business, social,
23 economic than the citizens of -- and elected officials of
24 that community.

25 And card clubs -- and I know quite a few and we made

1 in our proposal is doing fundraising, charitable events,
2 can be a very good asset if it is run properly.

3 One thing, the owner -- we have a facility, you know.
4 We have a business. We're incorporated. We're recognized
5 by the Secretary of State, we pay Franchise Tax Board.
6 Just not operating and -- because we can't apply for a
7 license. But even the owner of the facility who are -- it
8 is a strip mall, four units, they were excited about us
9 having it. Cardrooms tend to operate, you know, a little
10 more in the evening hours. And we're there while other
11 businesses are closed. It is a deterrent to crime.
12 They've had instances, graffiti, nothing -- no hard core
13 crime but graffiti, kids hanging around. The idea a
14 business being open in the evening is a deterrent to
15 negative activity in the area.

16 So, again, I appreciate your comments and wanting to
17 get it right in what is best for the citizens and the
18 community. And as far as these alternatives, I believe
19 successor-in-interest C is the best, unless there are
20 amendments or any other issues or alternatives that people
21 want to see. But to limit it to just previous license
22 owners -- another thing where it is not fair with previous
23 license owners, if you limit it to only the previous
24 license owners, some been out of business six or seven
25 years. They may not -- don't have equal opportunity to

1 share. This is a valuable asset now. It could be for
2 health reasons. They're sick now, maybe a family member is
3 sick. They maybe moved, maybe in another venture. They
4 may not have the economic resource to reopen. There are a
5 lot of reasons. Why should someone who is not an original
6 license owner be limited to -- in his opportunity to have
7 any economic gain as another one by these restrictions? It
8 makes no sense. Does not seem fair.

9 So to open up the ability to apply to as many
10 qualified or people as possible seems the best in every
11 way, shape or form.

12 I don't want to ramble on. I'll cut it right here.

13 CHAIRMAN SHELTON: Commissioners?

14 STEPHEN WALDMAN: Thank you.

15 CHAIRMAN SHELTON: Thank you very much. Is that it?
16 Nobody else?

17 ALAN TITUS: Good morning, Chairman Shelton,
18 commissioners, staff.

19 I'm Alan Titus, T-i-t-u-s, representing Artichoke
20 Joe's.

21 The statute 19963 prohibits the Commission from
22 issuing a gambling license for a gambling establishment
23 that was not licensed to operate on December 31, '99
24 subject to the exception for applications that were
25 submitted before September 1, 2000.

1 I emphasize the word "prohibit." One of the papers
2 handed out talked about approval, talked about the statute
3 in the opposite way, about it approving new issuing
4 licenses blah, blah, blah. That is not the way the statute
5 is framed. It is framed as a prohibition. I think we have
6 to start there as we figure out what it means.

7 Second, the statute talks about gambling
8 establishment. Question is what is meant by "gambling
9 establishment"? Do they mean the physical building that
10 the gambling operation is in? The gambling operation? Or
11 do they mean the owners?

12 In the Gambling Control Act it is the owners that must
13 be licensed. It is not the gambling establishment that
14 must be licensed, although the Act often refers to a
15 licensed gambling establishment.

16 We have a lot of confusion here. It is your task to
17 determine the legislature's intent and meaning and to
18 implement that intent in the -- in the proposed initial
19 Statement of Reasons. Four possibilities there are given.
20 And you're asked to make a policy determination. I don't
21 think that is correct. The legislature has made a policy
22 determination. You are not authorized to make it. You're
23 simply at this point told to implement their policy and
24 whatever their policy was when they passed that statute.

25 The statute begins with the language: In addition to

1 any other limitations on the expansion of gambling imposed
2 by Section 19962 or any provision of this chapter.

3 So it obviously is intended to put a limit on
4 expansion gambling. What type of expansion was possible in
5 the year 2000? At that point there had been a moratorium
6 in effect since January 1, '96. That moratorium applied to
7 expansion of gaming ordinances in cities and counties. For
8 four years there had already been a moratorium in place.
9 The only expansion that could be happening in 2000 would
10 have been re-issuance of reopening of -- of closed
11 cardrooms. That was it. Obviously we have to focus on
12 that.

13 Everyone agrees that 19963 does not allow for opening
14 of a cardroom that was not open December 31, '99. The
15 issue that comes up is what about the cardrooms that were
16 open at that point and have since closed down? The
17 question is whether or not to treat those as being reopened
18 in some way or simply the attempt to reopen them is really
19 a new gambling establishment.

20 The Act -- the Gambling Control Act does not refer at
21 all to dormant licenses. To the contrary, it refers to
22 surrender of licenses. Section 19877 authorizes the
23 Commission to deem a license to be surrendered if the owner
24 fails to renew it.

25 This section implies what you have enforced over the

1 years, which is that closures of a cardroom is deemed to be
2 surrender of the license.

3 Further, Section 19873 precludes transfer of a license
4 for assignment of the license.

5 So prior to the enactment of the 19963 there was no
6 concept of dormant licenses. At that point you were still
7 free to issue a State license to a cardroom that was closed
8 but it would have been a new license.

9 The passage of the Section 19963 created a moratorium
10 but did not somehow create a new regiment of the dormant
11 licenses. This is made clear in a letter from Senator Don
12 Perata to Gray Davis, if I may pass out copies of it.

13 CHAIRMAN SHELTON: Give them to Jim, if you will,
14 please.

15 ALAN TITUS: Give him copies for all?

16 CHAIRMAN SHELTON: All of them, yes.

17 ALAN TITUS: The letter on Page 2 under a section
18 entitled, "Moratorium," reads: Many of the cardrooms
19 believe that the card player market is finite and will not
20 sustain the addition of new cardrooms. They believe new
21 cardrooms will result in all cardrooms losing revenue and
22 some cardrooms losing economic viability. They believe a
23 moratorium should be placed on new cardrooms or the
24 activation of the dormant cardroom licenses. This will be
25 a restriction on rather than expansion of the gaming in

1 California and would be consistent with your desire to
2 restrict the expansion of gaming in the state.

3 The letter states the intent to the legislation to
4 prevent the licensing of new cardrooms or the activation of
5 dormant cardroom licenses.

6 The use of the conjunction "or" instead of "and" is
7 very significant. If the two categories are meant to be
8 neutrally independent and exclusive, then Senator Perata
9 would have used the word "and" and encompassed both of them
10 within the ambit of the moratorium. Instead, his use of
11 the word "or" tells us that the two categories really were
12 the same thing; that a dormant license was intended to be
13 treated as a new cardroom or the opening of a dormant
14 license was intended to be treated the same as a new
15 cardroom. And that was going to be prohibited.

16 The Statement of Reasons rejects this interpretation
17 of the statute. It has one sentence that addresses this.
18 The statement says nothing in Section 19963 requires as the
19 prerequisite for an issuance of a license to operate a
20 gambling license. It should say, "gambling establishment."
21 That the license be current and not expired. That
22 does not answer the question of what the statute means.
23 We need -- the issue is what does the statute say, not what
24 it does not say and whether a former licensee can reopen a
25 gambling establishment or whether that is going to be

1 treated as a new gambling establishment.

2 It is clear from the language of 19963, from the
3 circumstances surrounding the statute, the moratorium that
4 had been in place and from the legislative history, the
5 letter I have shown you, that the answers that are
6 reopening of a cardroom is really the opening of a new
7 cardroom. That is the way it is supposed to be treated.

8 Staff's interpretation allowing a license to be
9 reissued to an operator who held one previously would
10 result in an arbitrary distinction between cardrooms closed
11 before December 31, '99 and cardrooms closed afterwards.

12 I think that the statute intends to treat both of the
13 those the same. There is no reason why the legislature
14 would have made that arbitrary distinction.

15 CHAIRMAN SHELTON: Mr. Titus, can I back you up just a
16 minute? You're speaking like you're interpreting what the
17 legislator said in Mr. Perata's letter. When, in fact, he
18 said the "cardrooms believe." He didn't say the
19 "legislators believe." He said the "cardrooms believe."

20 So isn't that kind of a stretch when you say that is
21 the legislative intent?

22 ALAN TITUS: I think he was not acting as a
23 spokesperson for the cardrooms there. I think he is
24 telling why this was done.

25 CHAIRMAN SHELTON: Why wouldn't he say the legislators

1 were? Why would he say "cardroom"?

2 ALAN TITUS: Well, he wrote this letter just two weeks
3 after this language was put into the statute. And I think
4 that he was explaining what was going on here.

5 CHAIRMAN SHELTON: You and I differ on that. Neither
6 one of us can get in his mind to know what he was thinking.
7 He wrote this letter or his staff at a particular time.
8 Not trying to argue with you. I do believe for the record
9 we should read the letter as it is written. Proceed.
10 Thank you.

11 ALAN TITUS: Okay. I'm reading the letter as it is
12 written. I didn't change it at all.

13 CHAIRMAN SHELTON: You're adding your interpretation
14 to it, correct? You and I have added our individual
15 interpretation to it.

16 ALAN TITUS: I think you're raising the question of:
17 Does it speak to what the statute means? And I'm saying
18 that he wrote this at the time that the language was put in
19 the statute. And I think it offers you an idea what was in
20 the heads of the people running the legislature at the
21 time.

22 I think it is very powerful evidence of legislative
23 intent.

24 Staff's interpretation, I've shown, makes it one
25 arbitrary distinction between the owners before and the

1 owners after 1999. I think there is another arbitrary
2 distinction made here between old owners and new owners.
3 And I think that also is very questionable. I think the
4 more reasonable interpretation is that the legislature
5 intended to treat a closure of a cardroom as a closure. It
6 was not making these arbitrary distinctions. It was a very
7 simple manner.

8 Thank you, commissioners.

9 CHAIRMAN SHELTON: Commissioners, any questions?

10 COMMISSIONER SHIMAZU: No.

11 CHAIRMAN SHELTON: Thank you, Mr. Titus.

12 STEPHEN WALDMAN: Can I make one -- excuse me.

13 Stephen Waldman. I have one point of contention with
14 Mr. Titus on dormant licenses.

15 It is the business that is dormant. The license is
16 not dormant. The license is used or not used. The license
17 does not die. The State owns the license. No one -- no
18 cardroom operator owns the license. You have to apply for
19 the right to use the license. If there are a hundred
20 licenses on December 31, 1999 there is no increase. This
21 is what we have. Well, there is still a hundred licenses.
22 The business went dormant. The license does not go
23 dormant, I don't believe.

24 CHAIRMAN SHELTON: Thank you.

25 STEPHEN WALDMAN: Okay.

1 ROD BLONIEN: Good morning, Mr. Chairman, members.
2 Rod Blonien on behalf of Hemphill's. I just feel like
3 there is not a lot of energy in this room right now. It
4 has sort of died. I'd like to provide a little energy.

5 (Mr. Blonien sings Happy Birthday.)

6 ROD BLONIEN: Happy birthday, Jim.

7 JAMES ALLEN: Thank you very much.

8 CHAIRMAN SHELTON: Certainly was unexpected.

9 ROD BLONIEN: Even if there was a lot of energy, I
10 might have felt compelled to do that.

11 In response to a letter I wrote on behalf of Mr. Tim
12 Long and Hemphill's the Commission stated: However the
13 Commission may wish to consider whether it is possible to
14 allow heirs to be eligible to apply for the State gambling
15 license while still disallowing other persons from
16 purchasing the ability to apply for licensure from the
17 original licensee.

18 Hemphill's, we have a difficult situation. We have
19 Mr. Long passing. The club is operating his license. The
20 estate has the license for a period of time. They then
21 close the estate. But Mr. Tim Long's application is
22 working its way through the Bureau and he is not ready to
23 be licensed. And so Commission sat here and tried to
24 decide what to do. Couldn't license the estate because it
25 was no longer in existence. Couldn't license Tim Long

1 because you had not received his package from the Bureau.
2 What you did at that point is decided no one would be
3 licensed.

4 Now his license is about to come over to the
5 Commission for your consideration. And there -- you know,
6 certainly that situation it was no one's intent for the
7 license or the business to cease to exist. But it couldn't
8 be operated because legally it was not possible.

9 So I think in situations like that you need to take
10 into consideration in terms of your rulemaking process.
11 And what other situations may arise in the future, I don't
12 know but I suspect you may be facing things like that.

13 Secondly, Mr. Chairman, I completely applaud your
14 thoughts about natural disasters. I raise it in my letter
15 on behalf of the Commerce Club.

16 You keep -- the other day we had an earthquake up in
17 the north coast, 3.3. Every time the press talks about it
18 they say, well, California is overdue for a major
19 earthquake along the San Andreas fault or the Hayward
20 fault. I think about LA County. And whether it is the
21 Commerce Club, Bicycle Club, whatever club, one of the
22 clubs could be destroyed and have to be rebuilt. And with
23 everything else that is going on, perhaps helping the
24 relocation of the employees and rebuilding, we want them to
25 have to pay a million dollars or close to a million dollars

1 to keep their license going when they really are not in
2 business? And there is no provision in the law for a
3 license to be placed on hold while you're rebuilding or
4 something else is taking place.

5 And so I think you need to take into consideration
6 that type of situation. If it isn't an earthquake, could
7 be a fire. And 20 years ago we used to say fire season
8 started June 1st and went until November 1st. We had
9 ravishing fires this year much earlier. Who knows what
10 calamity unfortunately may lie ahead. And for devotees of
11 24 and Jack Bower, good gosh. Every week there is some
12 major disaster in some part of the country. Again, I think
13 it is something that needs to be taken into consideration.

14 Lastly, I don't want to say deeply concerned but I
15 sort of am. Staff's comment: Furthermore, the Commission
16 has long been concerned with increasing opportunities for
17 gambling due to the potential negative social cost
18 including crime and problem gambling. This proposed
19 regulation limits the number of potential cardrooms
20 eligible to reopen in an effort to minimize any negative
21 impacts.

22 That really, really bothers me. In essence we're
23 saying, hey, let's try to close as many card clubs as we
24 can to protect society and reduce crime.

25 When the Gambling Control Act was first enacted

1 language was somewhat forced on us that said gambling is
2 inimicable to the State of California and it's a disfavored
3 industry.

4 Legislature took the language out and replaced it with
5 language that talks about the economic benefits of
6 cardrooms, talks about the jobs and says further: Gambling
7 establishments are lawful enterprises in the state of
8 California and are entitled to full protection of the laws
9 of the state.

10 I, too, have a copy of the study done by Dr. Moore at
11 Stanford, which comes to the conclusion there is no more
12 crime around card clubs than there are around any other
13 place. If you're a bad cat wanting to do crime, you sure
14 as hell aren't going to come to the Commerce Club where
15 they have 90 uniformed security guards; nor are you going
16 to go to any of the other clubs where they have many
17 cameras and security as well.

18 A number of years ago a study was done in the city of
19 Commerce by the Los Angeles Sheriff's Department relating
20 to crime in Commerce. We found that there was more crime
21 at the Home Depot, more crime at the high school than there
22 was at the card club. Maybe we should look at closing high
23 schools and Home Depots.

24 But the bottom line is -- Chairman Shelton, you're
25 going to perhaps find some interest in this little story.

1 About 25 years ago I was talking to the Chief of Police of
2 a Northern California city about card club ordinance. And
3 he said, "Rod, I know why you're here." And he slammed his
4 fist down on the desk. He said, "You're here to talk about
5 gambling. The first day I was on the beat Pop Kennedy told
6 me, 'Jack, whores is bad. Drugs is bad. And gambling is
7 bad.' Rod, in my 40 years in the police department, I
8 never seen anything to show me that whores is good, dope is
9 good or that gambling is good."

10 I said, "Jack, but weren't we talking about
11 unregulated, unlawful gambling?"

12 "Pop Kennedy says all gambling is bad."

13 CHAIRMAN SHELTON: Chief Kerns would still believe
14 that.

15 ROD BLONIEN: How did you know? That is it exactly.

16 But you know, Mr. Chairman, you were Chief of Police
17 of South Lake Tahoe. You served there as an officer for
18 many years. If you look at that community, all of the
19 casinos right across the border -- and I didn't get crime
20 statistics for South Lake Tahoe. I bet it is comparable to
21 other cities.

22 CHAIRMAN SHELTON: You don't want to go there. Crime
23 rate was very high.

24 ROD BLONIEN: People coming through the city in terms
25 of whether they're going to a gambling establishment or

1 going to a concert. But I think it is unfortunate that
2 that language appears of record. And I don't think the
3 Commission has ever taken the position that card clubs
4 create crimes, spawn crime or are responsible for criminal
5 activity. And there have been no studies since J. Edgar
6 Hoover passed that indicates that that is the case.

7 Thank you.

8 CHAIRMAN SHELTON: Good point. I read that and didn't
9 think about it or we would have changed it. I'll let that
10 rest at my desk. You're appropriate in your statement.

11 Mic is open.

12 MARTY HORAN: Good morning, Mr. Chairman and
13 commissioners. Marty Horan with the Bureau of Gambling
14 Control, H-o-r-a-n.

15 We just have a couple of points that hopefully we can
16 bring up and some clarification to be added to the
17 regulation.

18 We submitted written comments and I just want to
19 reiterate some of the information on there.

20 In the opening paragraph of 12250 subsection (a) it
21 talks about any person who held a license to operate a
22 gambling establishment. We're concerned about
23 clarification needed for what that really entails. Does it
24 include any persons endorsed on the license, any
25 shareholders, community property, interest holders and

1 previously licensed persons as defined under 19805 in
2 parenthesis (a) (d)?

3 And in that definition there is a whole number of
4 individuals that would be included under a person. It
5 includes a natural person, corporation, partnership,
6 limited partnership, trust, joint venture, association or
7 any other business organization.

8 Our comments were similar to Mark Kelegian's comments
9 that he made from Crystal Card Casino. His comments had to
10 do with if the previous licensee was a legal entity such as
11 a corporation, partnership, or limited liability company,
12 who has the right to submit an application? For instance,
13 the legal entity only or any and all of the shareholders,
14 members, partnerships, etcetera.

15 So I guess our concern is maybe it's too broad as far
16 as -- okay.

17 CHAIRMAN SHELTON: I agree. Did you have a
18 recommendation? I --

19 MARTY HORAN: No, I don't necessarily. I just saw in
20 the original Commission's comments staff response was the
21 Commission may wish to hear public comment and hold a
22 discussion in order to reach a policy decision on this
23 issue.

24 CHAIRMAN SHELTON: Why we're here. We need help on
25 the wording.

1 MARTY HORAN: I think there needs to be more
2 discussion on how to fine tune the definition and make it
3 clear in the regulation.

4 The second point that we have, again, for possible
5 clarification is under Section C in parenthesis 2, below
6 that to add a parenthesis 3 that says: The investigation
7 conducted by the certified public accounting firm, firm's
8 procedures shall be performed in consultation with the
9 Bureau, which reserves the right to perform any financial
10 investigation work it deems necessary beyond that performed
11 by the public accounting firm and charge the applicant
12 accordingly.

13 Again, these were submitted comments prior. I'm
14 sorry. I do not have any proposed language to fine tune
15 the definition. I thought it was something we could have
16 additional comments on.

17 CHAIRMAN SHELTON: Commission is completely open on
18 this entire moratorium regulation. If you have any, we'd
19 appreciate it from anybody. If you don't have it at your
20 fingertips today, then contact Mr. Allen and they will
21 consider further recommendations you have. Sometimes, if
22 you're like me, on the way home you think, God, I wish I
23 would have said this. But please do. Participation is
24 appreciated.

25 COMMISSIONER SHIMAZU: Another issue about who that

1 entails in terms of the person or corporation and what if
2 there were multiple applications, if there was a
3 partnership and two people and they both submit an app, who
4 would get it? Somehow clear that out.

5 MARTY HORAN: Right. Okay. That is the only comment
6 I have. Thank you.

7 CHAIRMAN SHELTON: Thank you. Appreciate it. Anyone
8 else?

9 ROD BLONIEN: Mr. Chairman, members, I have a
10 question. That is: Is the record going to remain open?
11 Are we going to get another shot to give comment or is
12 today it?

13 JAMES ALLEN: I think the record will remain open. I
14 don't think the Commission is prepared to make a final
15 decision today. There will be another opportunity.

16 CHAIRMAN SHELTON: Excuse me. I can't even talk this
17 morning. What we're attempting to do with all of the
18 regulations is have a workshop after you've worked with
19 staff and had input so we can hear your line of thinking
20 and where you're trying to get to and then come back at a
21 later date for a Commission meeting. And hopefully for an
22 adoption realizing there is always more input in the final
23 Commission meeting and to be as open and transparent as we
24 can be.

25 At some point in the juncture we have to make a

1 decision right or wrong.

2 Commissioners? Staff? Further input?

3 COMMISSIONER SHIMAZU: I guess we'll be considering
4 comments about the successor-in-interest. Is that
5 something we're going to look at again?

6 CHAIRMAN SHELTON: I think you need to -- I
7 blind-sided all of you -- I apologize -- with my thoughts.
8 But I thought the industry had a right to hear how one
9 commissioner thinks anyways. And I'm not chiseled in
10 granite on the thoughts. But it is a good starting point
11 for this Commission in trying to be fair. Go from there.
12 I'm sure you'll get some comments on that.

13 Having said that, I'll entertain a motion to adjourn.

14 COMMISSIONER SHIMAZU: Move to adjourn.

15 COMMISSIONER VUKSICH: Second.

16 CHAIRMAN SHELTON: Call for the vote.

17 JOY CALKIN: Commissioner Shimazu?

18 COMMISSIONER SHIMAZU: Aye.

19 JOY CALKIN: Commissioner Vuksich?

20 COMMISSIONER VUKSICH: Aye.

21 JOY CALKIN: Chairman Shelton?

22 CHAIRMAN SHELTON: Aye. Thank you, everybody, for
23 your participation in being here. Some of you traveled a
24 long way. Blythe and San Luis Obispo.

25 (End of proceedings.)

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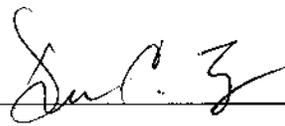
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The undersigned certified shorthand reporter of the state of California does hereby certify:

That the foregoing Commission meeting was taken before me at the time and place therein set forth;

That the testimony of the public and all objections made at the time of the hearing were recorded stenographically by me and thereafter transcribed, said transcript being a true copy of my shorthand notes thereof.

In witness whereof, I have subscribed my name this date May 29, 2009.


Desiree C. Tawney
Certificate Number 12414