

MISSOURI GAMING COMMISSION

COMMISSION RESOLUTION NO. 20-002-B
REGARDING WAIVER OF HEARINGS AND CONSENT ORDER

WARRENTON ELKS LODGE #2662
August 26, 2020

WHEREAS, the Missouri Gaming Commission issued proposed discipline against the Warrenton Elks Lodge #2662; and

WHEREAS, the Warrenton Elks Lodge #2662 and the Commission have come to an agreement concerning the issues presented in the proposed discipline, (a copy of the Settlement Agreement is attached as Exhibit 1).

NOW, THEREFORE, BE IT RESOLVED, that the Commission hereby approves the Settlement Agreement concerning the Warrenton Elks Lodge #2662.

BE IT FURTHER RESOLVED that this Settlement Agreement shall become effective upon the date of this resolution and be considered a final decision of the Missouri Gaming Commission.



IN THE MISSOURI GAMING COMMISSION

In RE: Warrenton Elks Lodge #2662)
License Number: B-2235) DC 20-002-B

SETTLEMENT AGREEMENT

The Missouri Gaming Commission takes up the above matter for consideration and disposition. The Missouri Gaming Commission ("MGC" or "Commission"), by Deputy Director Timothy P. McGrail, and Warrenton Elks Lodge #2662 ("Lodge #2662"), by and through counsel, have reached a settlement in this matter and have consented to the issuance of this Settlement Agreement.

Findings of Fact

- 1. The Missouri Gaming Commission is a state commission created under Chapter 313, RSMo (2016)1, with jurisdiction over gaming activities, including riverboat gambling and bingo activities, in the State of Missouri.
2. The Commission issued a Bingo License to Warrenton Elks Lodge #2662 (hereafter, "Lodge #2662" or "Licensee") to conduct the game of bingo.
3. As the holder of a Bingo license, Licensee is subject to the provisions of sections 313.005 to 313.085, RSMo, and the regulations promulgated thereunder by the Commission.
4. After receiving a written complaint on December 2, 2019, the MGC conducted an inspection of the Licensee's premises on January 9, 2020.
5. The January 9, 2020 inspection revealed the following findings:
a. Lodge #2662 hosted Texas Hold 'Em poker tournaments every Thursday at 6:30 p.m. at its premises;

1 All statutory references are to RSMo (2016) unless otherwise specified.

Handwritten initials 'S' and '8666' in red ink.

- b. The poker games were played by Lodge #2662 members in the Lodge's bar area;
 - c. The regular buy-in for the poker games was a \$6 bet per player;
 - d. At the end of the tournaments, players cashed in their winning chips at the bar;
 - e. James A. McRae, Brian K. Williams, and Fred David are listed as approved bingo workers for the Lodge #2662.
6. Licensee acknowledges and understands that it has the right to consult counsel at its own expense.
 7. Licensee admits to the facts alleged by the MGC and outlined in this Settlement Agreement.
 8. Licensee agrees that these facts constitute grounds to discipline its bingo license.
 9. On or about January 27, 2020, counsel for the Commission sent documentation to Licensee, which described the specific conduct for which discipline was sought and citation to the law allegedly violated, along with documents which were the basis thereof.
 10. Licensee has been advised that it has 60 days to review the documentation provided and consider the proposed settlement offer.
 11. Licensee acknowledges and understands that it may, either at the time the settlement agreement is signed by all parties, or within 15 days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement constitute grounds for disciplining Licensee's bingo license.
 12. Except as provided in paragraph 11, Licensee stipulates and agrees to waive any rights it may have to a hearing before the Administrative Hearing Commission or the Commission and any rights to seek judicial review or other challenge or contest of the terms and conditions of this Settlement Agreement and forever releases and holds harmless the Commission, and the

Executive Director and his agents from all liability and claims arising out of, pertaining to, or relating to this matter.

13. Each signatory to this Settlement Agreement certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Settlement Agreement in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Settlement Agreement.

14. The Commission is authorized to settle this matter and is authorized to issue this Consent Order in the public interest pursuant to §§ 313.004, 536.060, 621.045, RSMo.

Conclusions of Law

15. Section 313.052, RSMo, provides, in relevant part, as follows:

A holder of any license shall be subject to imposition of penalties, suspension or revocation of such license, or other action for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, good order and general welfare of the people of the state of Missouri, or that would discredit or tend to discredit charitable bingo operations in Missouri or the state of Missouri unless the licensee proves by clear and convincing evidence that he is* not guilty of such action. The commission shall take appropriate action against any licensee who violates the law or the rules and regulations of the commission. Without limiting other provisions of sections 313.005 to 313.085, the following acts or omissions may be grounds for such discipline:

- (1) Failing to comply with or make provision for compliance with the provisions of sections 313.005 to 313.085, the rules and regulations of the commission or any federal, state or local law or regulation;
- (2) Failing to comply with any rule, order or ruling of the commission or its agents pertaining to bingo;

* * *

- (8) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties regulated by the provisions of sections 313.005 to 313.085.

16. Section 313.070, RSMo, provides that "any license issued under sections 313.005 to 313.080 shall be suspended or revoked by the commission if it is found that the licensee or any person connected therewith has violated any provision of sections 313.005 to 313.080 or any rule or regulation of the commission adopted pursuant to sections 313.005 to 313.080."

17. Section 313.080 states that "Any person who violates any provision of sections 313.005 to 313.080 shall be guilty of a class A misdemeanor."

18. Section 572.010, RSMo contains the following definitions:

(1) "Advance gambling activity", a person advances gambling activity if, acting other than as a player, he or she engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward the creation or establishment of the particular game, lottery, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement or communication of any of its financial or recording phases, or toward any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his or her knowledge for purposes of gambling activity, he or she permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation. ...;

* * *

(4) "Gambling", a person engages in "gambling" when he or she stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his or her control or influence, upon an agreement or understanding that he or she will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, Gambling does not include any licensed activity, or persons participating in such games which are covered by sections 313.800 to 313.840;

(5) "Gambling device" means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person with a machine. ...;

(6) "Gambling record", any article, instrument, record, receipt, ticket, certificate, token, slip or notation used or intended to be used in connection with unlawful gambling activity;

* * *

(8) "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in "bookmaking" as defined in subdivision (2) of this section is not a "player";

* * *

(10) "Profit from gambling activity", a person "profits from gambling activity" if, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity;

* * *

(12) "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge;

(13) "Unlawful" means not specifically authorized by law.

19. Under § 572.020, RSMo, "A person commits the crime of gambling if he knowingly engages in gambling."

20. Section 572.030, RSMo, states, in pertinent part, as follows:

1. A person commits the crime of promoting gambling in the first degree if he knowingly advances or profits from unlawful gambling or lottery activity by:

- (1) Setting up and operating a gambling device to the extent that more than one hundred dollars of money is gambled upon or by means of the device in any one day, or setting up and operating any slot machine[.]

21. Under § 572.040.1, RSMo, “A person commits the offense of promoting gambling in the second degree if he knowingly advances or profits from unlawful gambling or lottery activity.”

22. Under § 572.090.1, RSMo, “Any room, building or other structure regularly used for any unlawful gambling activity prohibited by this chapter is a public nuisance.”

23. Section 513.660, RSMo, states as follows:

Any gambling device or gambling record, or any money used as bets or stakes in unlawful gambling activity, possessed or used in violation of this chapter may be seized by any peace officer and is forfeited to the state. Forfeiture procedures shall be conducted as provided by rule of court. Forfeited money and the proceeds from the sale of forfeited property shall be paid into the school fund of the county. Any forfeited gambling device or record not needed in connection with any proceedings under this chapter and which has no legitimate use shall be ordered publicly destroyed.

24. Title 11 CSR 45-30.270 states as follows:

- (1) The word premises, as used in sections 313.005 to 313.085, RSMo, means an entire permanently affixed structure. The division of a structure by floors, rooms, or areas to create multiple premises for the conduct of bingo is prohibited. A bingo licensee must receive approval from the commission prior to using any structure in which it intends to play bingo.
- (2) The premises where any game of bingo is being conducted, or where any game of bingo is intended to be conducted, shall be open for inspection by the commission or its appointed representatives. The licensed hall provider or the licensed bingo organization/operator, or any entity determined by the commission or the courts required to have a license pursuant to Chapter 313, RSMo, shall permit access to said premises during any reasonable time as requested by the commission or its representative.
- (3) Pursuant to section 313.035, RSMo, no unauthorized gambling or gambling devices, as defined by Chapter 572, RSMo, shall be permitted on the premises used by a bingo licensee. The bingo licensee, its officers and agents shall be responsible for any violations that may occur.

- (4) The presence of gambling devices such as, but not limited to, slot machines, roulette wheels, or other gambling games shall be *prima facie* evidence of violations of those provisions of Chapter 572, RSMo relating to gambling and gambling promoters.
- (5) The commission shall have the right to impose penalties and suspend, revoke, or deny any license issued under Chapter 313, RSMo for any other violations related to illegal gaming and/or gambling under Missouri law.

25. Title 11 CSR 45-30.535(6), allows the Commission to suspend "any existing license required by the bingo statutes."

26. Title 11 CSR 45-30.550 requires the following:

- (1) Licensees, workers, members, partners, agents, and employees of a licensee shall promptly report to the commission any facts which the licensee has reasonable grounds to believe indicate a violation of law (other than a traffic violation) or commission rule committed by any licensed bingo manufacturer, supplier, or organization, its workers or employees, including, without limitation, the performance of licensed activities different from those permitted under its license.

* * *

- (3) In the event that a licensee's worker, agent, partner, member, or employee knows or should have known that an illegal or violent act has been committed in association with bingo activities, the individual shall immediately report the occurrence to the commission and local law enforcement officials, if applicable, and shall cooperate with law enforcement authorities and agents of the commission during the course of any investigation of the occurrence.

27. Licensee acknowledges and understands that under §§ 313.052(1), (2), and (8), and 313.070, RSMo, the Commission can suspend the Licensee's bingo license because it violated provisions of §§ 313.005 to 313.085 and chapter 572, RSMo, the rules and regulations of the commission, and/or order or ruling of the Commission or its agents pertaining to bingo, by hosting, running, and/or operating poker games on its premises.

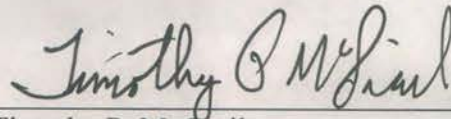
ORDER

IT IS AGREED AND STIPULATED THAT as follows:

1. Lodge #2662 will pay a fine of \$500.00, to be paid out of non-bingo funds and made payable to the "Warren County Treasurer," within 30 days of the Missouri Gaming Commission's approval of this Settlement Agreement.

2. Lodge #2662 will agree to obey all laws, including, but not limited to, those concerning the operation of Bingo games, and will cooperate fully with the MGC in all investigations and inquiries into its bingo operations and license.

Dated: 5/26/2020



Timothy P. McGrail
Deputy Director
Missouri Gaming Commission

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Warrenton Elks Lodge #2662 has the right to a hearing, but that Warrenton Elks Lodge #2662 has waived the hearing and consented to the issuance of this Consent Order.

FRED C DAVID E/R
Warrenton Elks Lodge #2662
By: Fred C David
1101 E. Veteran's Memorial Parkway
Warrenton, MO 63383

5/19/2020
Date

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5/26/2020
Date

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5/26/2020
Date