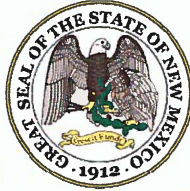


STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

October 31, 2017

New Mexico Gaming Control Board
Stefen Sloane, Staff Counsel
4900 Alameda Blvd. NE
Albuquerque, NM 87113

Re: Open Meetings Act Complaint by Jackie Farnsworth

Dear Mr. Sloane:

Thank you for providing, on behalf of the New Mexico Gaming Control Board (the "Board"), the documents and information our office requested regarding the complaint submitted by Jackie Farnsworth (the "Complaint"), which alleges the Board may have violated the New Mexico Open Meetings Act ("OMA" or the "Act"), NMSA 1978, Sections 10-15-1 to -4 (as amended through 2013). Our findings are based on review of the Complaint, responses and information provided by the Board, and our own research. Regarding the allegations raised in this complaint, the Board is found in compliance with the OMA and our office finds no evidence of a violation.

The Complaint raised several concerns regarding the Board's meeting held April 20, 2016. It was alleged the Board may have violated the OMA by discussing agenda items in closed session not subject to an exception under the Act. The Complaint also raises concern that matters discussed during the Board's closed session were voted on without further discussion in open session.

The Board has denied the allegations and cites to the exceptions for licensing matters and information made confidential pursuant to the Gaming Control Act as authority under the OMA for closing a portion of its meeting. See NMSA 1978, §10-15-1(H)(1) ("meetings pertaining to issuance, suspension, renewal or revocation of a license") and §10-15-1(H)(10) ("portion of a meeting of the gaming control board dealing with information made confidential pursuant to the provisions of the Gaming Control Act"). The second exception cited under the OMA allows for additional exceptions for matters considered "confidential" pursuant to the Gaming Control Act, NMSA 1978, Sections 60-2E-1 to -62. The Gaming

Control Act references “confidential” information in five specific provisions:

Section 60-2E-6(C): “[t]he board may close a meeting to hear **confidential security and investigative information** and other information made confidential by the provisions of the Gaming Control Act.”

Section 60-2E-11(D): “The board's law enforcement officers shall maintain confidentiality regarding **information received from a law enforcement agency that may be imposed by the agency as a condition for providing the information to the department**, except that the board's law enforcement officers may provide criminal history information and reports to licensees or tribal gaming casinos when conducting background checks on behalf of the licensee or tribal gaming casino.” (also established by Section 60-2-14(J)).

Section 60-2E-32(B): Related to investigations by the Board, “The **summary of the evidence** shall be confidential and made available only to the respondent until such time as it is offered into evidence at any public hearing on the matter.”

Section 60-2E-34.1: Related to self-exclusion from gaming establishments for persons who are compulsive gamblers, “except for notification of the gaming establishments for which the self-exclusion order is effective and for notification for mailing list exclusion pursuant to this section, the **application and the self-exclusion order** shall be held confidential by employees of the board and a gaming operator licensee and its employees and key executives.”

Section 60-2E-41(A): “**Any communication or document of an applicant or licensee** is confidential [...] if it is required by: (1) law or regulation of the board; or (2) a subpoena issued by the board to be made or transmitted to the board.”

The Complaint refers to four different matters on the Board’s agenda discussed in closed session and allegedly not subject to an exception under the OMA. Each allegation is addressed below.

1. Renewals of licenses and consideration of work permits: These agenda items are the portion of the meeting “pertaining to issuance ... of a license” and are clearly exempt under the licensing exception of the OMA, Section 10-15-1(H)(1). Work permits are a form of license under the Gaming Control Act, Section 60-2E-14, and Board rules specifically include work permits under the definition of a license. Furthermore, these items are exempt as confidential information pursuant to the OMA Section 10-15-1(H)(10)

and Section 60-2E-41(A) of the Gaming Control Act.

2. Consideration of waiver of finding of suitability for institutional investor: Institutional investors under the Gaming Control Act are also subject to licensing by the Board. The agenda item is the portion of the meeting “pertaining to issuance ... of a license” and is also exempt under the OMA, Section 10-15-1(H)(1). Licensing requirements of institutional investors are found under Sections 60-2E-20 and -24 of the Gaming Control Act, which further provide that such matters are confidential under its act, and therefor exempt under Section 10-15-1(H)(10) of the OMA.

3. Presentation of audit report: Our review determined audit reports required by Board rules are compiled from information provided by individuals licensed by the Board. Communication and documents of licensees are confidential pursuant to the Gaming Control Act, Section 60-2E-41(A). Audit reports therefor may be discussed in closed session pursuant to the Gaming Control Act, Section 60-2E-6(C), as authorized by the OMA, Section 10-15-1(H)(10).

4. Title change: Discussion of a title change is also considered a licensing matter, as it pertains to the Board’s review of applicants for a Finding of Suitability. Approvals or restrictions to any Finding of Suitability may be issued “on the same ground as it may take such action with respect to other licenses or licensees.” 15.1.5.16.H NMAC. A title change that is connected to an individual the Board considers an applicant or licensee may be discussed in closed session as confidential information under the Gaming Control Act, Section 60-2E-41(A), and exempt under the OMA, Section 10-15-1(H)(10).

After a thorough review, our office determines that matters discussed in closed session during the Board’s April 20, 2016, meeting were subject to exceptions under the OMA Sections 10-15-1(H)(1) and (H)(10). While the Board’s responses to our office during this review cite to these two exceptions in the OMA, other provisions of the Gaming Control Act and Board rules related to confidentiality were also used as authority for closing the meeting. It is important to note that exceptions to the OMA are limited to the ten enumerated exceptions in the Act, and the Board may apply an exception only for discussing “information made confidential pursuant to the provisions of the Gaming Control Act.” NMSA 1978, § 10-15-1(H)(10). The Board cannot expand the definition of confidential information beyond what is provided in the Gaming Control Act, and any Board rule that exceeds the scope of the statute may be considered invalid.

There is a statutory presumption in the OMA that a public body acted in accordance with the requirements of the Act. See NMSA § 10-15-3(A). Based on the information our office has at this time, there is insufficient evidence to overcome this presumption and must therefore conclude that the Board acted in accordance with the OMA.

Accordingly, we consider this matter closed. Should you have any questions about this

determination or the OMA in general, please do not hesitate to contact me directly at jdworak@nmag.gov or the Office of the Attorney General Open Government Division at (505) 490 - 4060. Thank you for your attention to this important matter.

Sincerely,



Joseph M. Dworak
Assistant Attorney General

cc: Jackie Farnsworth

OPEN MEETING ACT ("OMA") COMPLAINT FORM

New Mexico Office of the Attorney General

Open Government Division

2016 MAY 13 AM 7:14

Your Contact Information:

First Name: JACKIE Last Name: FARNSWORTH

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number: [REDACTED]

Email: [REDACTED]

Name of Public Body that is the Subject of this Complaint (including city/town, district, county or region, if applicable): NM Gaming Control Board

Specific date(s) of OMA violation(s): April 20th 2016

ALLEGED VIOLATIONS OF THE OMA BY THE PUBLIC BODY: Please select from the following list the violations you allege the public body committed. Check all that apply.

DEFICIENCIES IN NOTICE OF THE MEETING

- Notice did not comply with the deadlines or procedures for meeting notices adopted by the public body, or with the reasonable notice requirement in the OMA
Notice did not include date, time, and/or location of the meeting
Notice was not published or posted in a place and manner accessible to the public
Notice did not include an agenda or information on how the public may obtain a copy of the agenda
A meeting was reconvened by the public body, but notice of the date, time, and place of the reconvened meeting was not placed on or near the door of the place where the original meeting was held or in at least one other location appropriate to provide public notice

AGENDA

- Agenda was not available seventy-two (72) hours prior to the meeting

- Agenda did not include a list of specific items the public body intended to discuss or transact at the meeting or the items listed and acted upon were not listed with reasonable specificity
- Public body took action on items that were not listed on the agenda
- In a reconvened meeting, the public body discussed or took action on items not appearing on the agenda of the original meeting

MINUTES

- The minutes did not contain the date, time, and/or place of meeting, the name of all members of the public body attending the meeting and those absent
- The minutes did not contain a description of the substance of all proposals considered during the meeting or a record of any decisions made and votes taken
- A draft copy of the minutes was not available within ten (10) working days of the meeting
- The minutes were not approved, amended, or disapproved at the next meeting where a quorum of the public body was present

CLOSED MEETINGS

- The public body did not follow the required closing procedures to close a meeting (e.g., did not list the items they were going to discuss in the motion to close, or the motion to close did not contain the provision of law permitting the closing of the meeting)
- The public body closed the meeting to discuss an issue not covered by one of OMA's exceptions
- Matters not stated in the motion to close were discussed in the closed session.
- Final action was taken by the public body in the closed meeting

CONDUCTING/DISCUSSING BUSINESS OUTSIDE OF AN OPEN MEETING

- A quorum of the public body formulated policy, discussed public business, or took action outside of an open meeting
- A "rolling quorum" was used to discuss public business (i.e., a quorum may exist even when the members are not physically present at the same place, such as discussing public business in a series of telephone or email conversations)

___ A committee was created by the public body that constitutes a policymaking body that formulated recommendations that were binding on the public body or otherwise established policy for the public body, outside of an open meeting

DETAILED EXPLANATION OF ALLEGED OMA VIOLATIONS: Please provide a description of the actions taken by the public body that violated the OMA, including specific dates and times, and why you believe the OMA has been violated.

See attached letter

Esp: B. 1. a. b. c. d. Renewals of
Sailing licenses for 2015-2016

B. 3.a. Title change

A. 1, 2, 3, 4, 5, 6, 7 Pending Administrative
and enforcement actions-

All are not valid exceptions for OMA and

2 Miscellaneous is questionable -
unless they were put under limited
personal matters.

These should have been discussed in open
meetings, not legal in executive session.

ADDITIONAL INFORMATION: Please attach any documentation or evidence you have regarding the alleged OMA violation.

Notes on agendas were for record
keeping of mine.

New Mexico office of the Attorney General
Open Government Division

Dear Persons,

I attended a regular Board of Directors Meeting of the New Mexico Gaming Control Board in Albuquerque on Wednesday, April 20th, 2016 and what I observed appeared to be an intentional and flagrant violation of the Open Meeting Act.

Before the open meeting, they held a two hour and forty minute closed executive session with an agenda which contained items which are not exceptions to the requirements to conduct deliberations in public. Though there were items of discussion listed which were legal, such as personnel discussions and pending and threatened litigations, many of the items on the agenda of the closed session were subjects which should have been discussed in the public meeting. These include renewals of Gaming Licenses for 2015/2016, presentation of audit report, Title change, and consideration of Waiver of Finding of suitability for Institutional Investor.

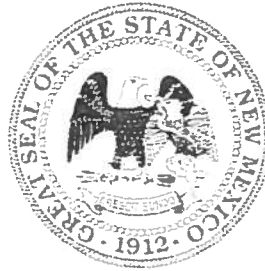
After the Closed Executive Meeting they convened in Open meetings and approved all actions on the same agenda unanimously without any discussion in a matter of 20 minutes. So what we have is a record of the unanimous actions without the public able to hear any of the deliberations. They did defer 2 actions but never explained why.

Having served on a local school board for 8 years under the Open Meetings Act, this seems to me to be an obvious attempt to discuss and decide the vote out of the public's scrutiny. They were scrupulous about putting everything on the agenda and voting perfunctorily and unanimously in public but had obviously discussed and decided how to vote on items that should have been discussed in public.

The public heard no discussion, explanation, or rationale for any vote and we are left totally in the dark about it but quite aware that they had decided in advance how the vote would go. As a member of the public interested in the votes, I felt insulted, ignored and patronized. I don't believe this follows the spirit of the public nature of the workings of the board or the requirements of the Open Meetings Act.

Sincerely,

Jackie Farnsworth,
Board member of Stop Predatory Gambling NM
1011 Crestview Dr. Los Lunas, NM 87031
farnsworthjackie@gmail.com
865-6160



NOTICE OF BOARD OF DIRECTORS MEETING
THE NEW MEXICO GAMING CONTROL BOARD
ONE-DAY REGULAR BOARD MEETING

The New Mexico Gaming Control Board will conduct a one-day regular Board meeting. On Wednesday, April 20, 2016, the Board will meet in closed executive session commencing at 9:00 a.m. until 11:00 a.m., at which time they will meet in open session. The meeting will be held at 4900 Alameda Blvd. NE, Albuquerque, New Mexico. Subject matters to be discussed are included on the attached proposed agenda. Please note the agenda is subject to change. A final agenda will be available to the public at least 72 hours prior to the meeting. A copy of the final agenda may be obtained from the office of the Gaming Control Board, located at 4900 Alameda Blvd. NE in Albuquerque, New Mexico or by calling Denise Leyba at the GCB office at 505-274-4345 during regular business hours.



If you are an individual requiring auxiliary aids or services, pursuant to the Americans with Disabilities Act, in order to attend a meeting of the New Mexico Gaming Control Board, please contact Denise Leyba at (505) 274-4345 at least forty-eight (48) hours prior to the meeting. The NM Gaming Control Board meetings are open to the public and your attendance is welcome. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Denise Leyba (505) 274-4345 if a summary or other type of accessible format is needed.



NEW MEXICO GAMING CONTROL BOARD ONE-DAY REGULAR BOARD MEETING AGENDA

April 20, 2016 - 9:00 a.m.

(Note: All items on agenda may result in Board action.)

Wednesday, April 20, 2016

- I. Call to Order -9:00 a.m.
 - A. Roll Call

- II. CLOSED EXECUTIVE SESSION - (Closed pursuant to Section 10-15-1 (H) NMSA 1978, "Open Meetings Act")
 - A. Pending Administrative and Enforcement Actions
 1. Aristocrat Technologies, Inc. and Steven Sheehan
 2. Ruidoso Downs Racetrack, Larissa Bookout and Leon Eggleston
 3. The Downs at Albuquerque and Wilson Brent Myrick
 4. Bally Technologies, Inc.
 5. Consideration of approval of Settlement Agreement, Tina Collier, Cause No. 16-006-SA
 6. Consideration of approval of Settlement Agreement, Ruidoso Downs, Cause Nos. 13-001-EA, 13-002-EA, 13-005-EA, 13-006-EA, 13-007-EA
 7. Status update on Fraternal Order of Police #3

 - B. Licensing
 1. Renewals of Gaming Licenses for 2015/2016
 - a. B.P.O Elks #2053 (Grants, NM)
 - b. New Mexico Gaming, LLC (Albuquerque, NM)
 - c. Penn National Gaming, Inc. (Wyomissing, PA)
 - d. Zia Park, LLC (Hobbs, NM)

 2. Miscellaneous
 - a. Consideration of work permit, Justin Lowrance, Slot Technician, My Way Holdings/Sunland Park
 - b. Consideration of Denial of Application for Work Permit, Orlando Chavez, Zia Park & Casino
 - c. Consideration of Waiver of Finding of Suitability for Institutional Investor, Eagle Asset Management for Everi Holdings, Inc.
 - d. Presentation of audit report, Zia Park

 3. Title Change
 - a. Teddy L. Elliott - Post Commander - Veterans of Foreign Wars #10124 (Las Cruces, NM)

 - C. Tribal Gaming Matters
 - No Business

 - D. Pending and Threatened Litigation
 1. Gaming Control Board vs. Trulee May; Loyal Order of Moose #1718; Cause No. 13-004-EA
 2. Gaming Control Board vs. My Way Holdings; Cause No. 15-009-EA
 3. Gaming Control Board vs. Kathryn Clark; Cause No. 16-006-SA

- E. Limited Personnel Matters
 - No Business

III. Recess



NEW MEXICO GAMING CONTROL BOARD
ONE-DAY REGULAR BOARD MEETING AGENDA

April 20, 2016 - 11:00 a.m.

(Note: All items on agenda may result in Board action.)

Wednesday, April 20, 2016

IV. OPEN SESSION – Please note that items after 11:00 a.m. may be taken out of sequence at the discretion of the Chair.

A. Call to Order - 11:00 a.m.

1. Roll Call

B. Approval of Agenda

C. Approval of Minutes

1. Minutes of One Day Regular Board Meeting, March 15, 2016
2. Minutes of One Day Regular Board Meeting, March 16, 2016
3. Minutes of One Day Special Board Meeting, March 28, 2016
4. Minutes of Working Session, April 4, 2016

D. Pending Administrative and Enforcement Actions

1. Consideration of approval of Settlement Agreement, Tina Collier, Cause No. 16-006-SA
2. Consideration of approval of Settlement Agreement, Ruidoso Downs, Cause Nos. 13-001-EA, 13-002-EA, 13-005-EA, 13-006-EA, 13-007-EA

E. Licensing

1. Renewals of Gaming Licenses for 2015/2016

- a. B.P.O. Elks #2053 (Grants, NM) *to renew*
- b. New Mexico Gaming, LLC (Albuquerque, NM)
- c. Penn National Gaming, Inc. (Wyomissing, PA)
- d. Zia Park, LLC (Hobbs, NM)

2. Miscellaneous

- a. Consideration of work permit, Justin Lowrance, Slot Technician, My Way Holdings/Sunland Park
- b. Consideration of Denial of Application for Work Permit, Orlando Chavez, Zia Park & Casino
- c. Consideration of Waiver of Finding of Suitability for Institutional Investor, Eagle Asset Management for Everi Holdings, Inc.

3. Title Change

- a. Teddy L. Elliott - Post Commander - Veterans of Foreign Wars #10124 (Las Cruces, NM)

F. Policy & Rulemaking

1. 2016 Delegation of Authority Resolution

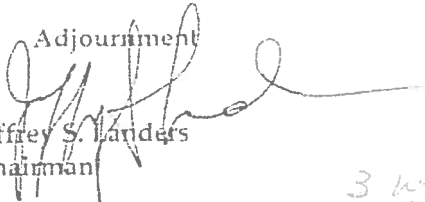
Deferred to May meeting

G. Public Comments

H. Board Chair's Announcements

1. ~~April~~ Regular Board meeting is scheduled for Tuesday, May 17, 2016 in Albuquerque, NM (Bingo)
2. ~~April~~ Regular Board meeting is scheduled for Wednesday, May 18, 2016 in Albuquerque, NM (Gaming)

V. Adjournment


Jeffrey S. Sanders
Chairman

3 hrs
Steve Lambert new manager of
Zoo Park

*Frank Gonzales - Rudas area
Jean Epsom - ~~Las~~ Farmington
Enforcement officers*