IOWA RACING AND GAMING COMMISSION
MINUTES
JANUARY 19 - 20, 1994

The Iowa Racing and Gaming Commission (IRGC) met on Wednesday, January 19, 1994, at 5:00 p.m., at Adventureland Inn in Altoona, Iowa. Commissioners present were: Chair, Lorraine May; Vice-Chair, Dick Canella; and members Rita Sealock and Del Van Horn.

Chair May called the meeting to order and entertained a motion to move into Executive Session for the purpose of hearing the results of background investigations performed by the Division of Criminal Investigation (DCI). Commissioner Canella so moved with Commissioner Van Horn seconding the motion. Motion passed.

Following Executive Session, the Chair recessed the meeting until 8:30 a.m., Thursday, January 20, 1994.

The Chair reconvened the meeting at 8:30 a.m., on Thursday, January 20, 1994, at Adventureland Inn in Altoona, Iowa. Commissioner Blair joined the meeting.

The Chair entertained a motion to approve the agenda with the addition of administrative business. Commissioner Sealock so moved with Commissioner Canella seconding the motion. Motion passed.

Chair May recognized Jack P. Ketterer, Administrator for IRGC, to discuss the next item on the agenda, adoption of amendments to Chapter 20, "Process for Excursion Gambling Boats" and Chapter 25, "Riverboat Operations," Iowa Administrative Code. The amendments would add the language "not more than" indicating the original licenses issued would not exceed three years and would be subject to annual renewals thereafter. The language in the rule would then mirror the statutory language in 99F.7.

Commissioner Canella moved to adopt the amendments to Chapters 20 and 25, with Commissioner Sealock seconding the motion. Motion passed. (See Order 94-1)

Chair May called up the Sioux City Sue operations status and recognized Bruce Crary, counsel for the Sioux City Sue. Mr. Crary stated that during November, he and the Sioux City Riverboat Corporation spoke with several business entities who were interested in the success of the Sioux City Sue. He stated that Gaming Development, Inc., was chosen by Sioux City Riverboat Corporation and the Missouri River Historical Development (MRHD) to manage the Sioux City Sue until early April.

Jerry Hanson, a representative for the City of Sioux City stated that the City fully supports Gaming Development, Inc., and is looking forward to keeping either the Sioux City Sue, or another boat in the Sioux City area.

David O'Brien representing MRHD, agreed that he felt confident that Gaming Development, Inc., would be able to fulfill their obligation as manager and that it would be a good deal for everyone.

Carl Bolm, a representative of Gaming Development, Inc., stated that he was excited to be involved in this project and felt that the development of new and expanded marketing procedures would light the way for future success for Sioux City operations.

Commissioner Sealock asked Mr. Bolm about his qualifications to manage a casino gambling boat. Mr. Bolm informed the Commission that Gaming Development, Inc., had been involved in the start-up of riverboat gambling with many states. Gaming Development had been involved in the development of facilities, marketing, and personnel with the Alton Belle in Illinois. He also was involved with gaming studies and financial packages in New Orleans, Louisiana, and Lake Charles. He stated their expertise spans over the past two years and they were proud to announce they had hired Ron Gordon as General Manager. Mr. Gordon is currently is licensed in Illinois and Las Vegas, and has over 24 years experience in the gaming business.

Commissioner Canella asked if Mr. Gordon had submitted his background investigation application to the Division of Criminal Investigation (DCI). Mr. Bolm responded that Mr. Gordon is in the process of finishing his application and would be sending it to the DCI immediately. However, if the Commission wished, he could provide Mr. Gordon's resume to expedite the process of the background investigations.

Chair May stated that another concern was the nonspecific term of the management and escrow agreement and requested the agreement be subject to termination unless brought before the April Commission meeting. Mr. Bolm stated that he felt that would be acceptable.

Mr. Crary spoke on the closing of the sale of the Sioux City Sue and stated that the closing date had been extended to April 1, 1994. He explained that the Sioux City Riverboat Corporation would like to see the jobs remain in the Sioux City area and that hopefully, sometime between this meeting and the March or April meeting Gaming Development, Inc., and the Sioux City Sue would come to an agreement for some type of a joint venture or partnership. The possibility has been discussed for Gaming Development, Inc., to come into ownership of the Sioux City Riverboat Corporation and provide financing.

Commissioner Sealock moved to approve the Option Agreement as provided; the Management and Escrow Agreement, subject to termination unless submitted to the Commission at the April meeting; and DCI and IRGC approval of the background investigation and licensure of Ron Gordon as General Manager by February 1, 1994. Commissioner Canella seconded the motion with all in favor. (See Order 94-2)

Chair May recognized Bruce Wentworth, Dubuque Racing Association (DRA), to discuss an Amendment to the Operators Agreement for the Greater Dubuque Riverboat Entertainment Co., L.C., (GDREC).

Mr. Wentworth stated that first he wanted to thank Norma Denlinger for her years of expertise and knowledge as she steps down as President of the DRA. Commissioner May echoed Mr. Wentworth's sentiments and the Commission wished her well.

Mr. Wentworth stated that the Sixth Amendment states that GDREC agrees to pay a penalty of $1,250 per day to begin after July 31, 1993. These monies shall be distributed to the City of Dubuque and Dubuque County for damages incurred due to the delay in operations. Upon commencement of operations, the $1250.00 per day payment shall cease and amounts still owed to the City of Dubuque and Dubuque County shall be remitted directly by GDREC.

Commissioner Canella stated that the he did not like the amendment and felt the penalty of $1,250 per day was excessive and would jeopardize the success of the Dubuque Diamond Jo and future benefits to the City of Dubuque. Mr. Wentworth stated that while he appreciated Commissioner Canella's comments, the agreement had been signed by both parties.

Joe Zwack, GDREC, discussed the loan extension agreement with Caterpillar Financial Services to change the date from December 15, 1993, to March 1, 1994. Mr. Zwack stated that at the time they requested the March 1, 1994, date, they felt they would have a two week cushion. Although the agreement states that this would be the final extension, Mr. Zwack commented that he felt there would be no problem getting another extension. Due to changes in Coast Guard regulations, some changes on the boat were made several times and consequently delayed the completion of the boat. Mr. Zwack stated that although he feels it will only be two or three more weeks, he hesitates giving another date at this time.

Mr. Zwack stated that the other financial agreement for approval is with Don Iverson. Mr. Iverson has guaranteed up to $1.1 million which will be replaced by a $1 million guarantee later.

Chair May asked how their cash flow was at this time. Mr. Zwack stated, to date expenses are within budget. He said that he felt confident about their cash flow since they have about 50 investors with a net worth of approximately $50 million dollars. As a precaution, they have had discussions with lending institutions as well. He said that at this time, it is impossible to know the final costs involved due to all the Coast Guard required changes.

Commissioner Canella asked what they were doing to market the boat.

Mr. Zwack stated that they had just hired a marketing advisor and would be hiring another one next week. To date, 18 billboards have been put into place and over 6,000 mailings have been sent in the past two weeks. He stated that they have checked into the summer bus tours and are currently booking summer dates.

Chair May entertained a motion to approve the Sixth Amendment to the Operator's Agreement, the extension of the expiration date of Caterpillar Financial Services Corporation loan commitment letter to March 1, 1994, and the Caterpillar and Iverson contracts. Commissioner Canella so moved with Commissioner Blair seconding the motion. Motion passed. (See Order 94-3)

Chair May stated that, although not on the agenda for discussion, she wanted to mention that the admission fees, as voted upon at the November 18, 1993, Commission meeting, Order No. 93-70, would now be null and void. These admission fees were approved with the contingency that the Sioux City Sue would cease operations.

Chair May called upon Gene Enke, Southeast Iowa Regional Riverboat Corporation (SIRRC), to discuss the license application for Catfish Bend and SIRRC which was deferred from earlier in the meeting.

Mr. Enke explained that they were very excited about the prospect of bringing a boat back to the Fort Madison, Burlington, and Keokuk areas. He stated that the Emerald Lady's departure was very devastating and hoped to have their boat begin operations by Labor Day weekend. Mr. Enke announced that they had chosen Catfish Bend to be the boat operator. He stated that with the combination of SIRRC, Catfish Bend and the intra-state stock offering, this would be a win-win situation for everyone.

Gary Hoyer of Catfish Bend emphasized that this project brings considerable strength to their economic development programs. He stated that it will bring jobs, tourism, and uniting of the communities. Mr. Hoyer stated they are waiting for the new boat to be delivered to Clinton, and at that time, the Mississippi Belle II would be traveling down river to Fort Madison and Burlington.

Steve Juergens stated that he would publicly like to thank Terry Hirsch, Director of Riverboat Gambling for the IRGC, for his cooperation and assistance in putting the applications together.

Mr. Ketterer asked for an update on the public offering. Gary Hoyer stated that interest in investing in this project has been good, but slow in part due to people wanting to wait until the money is actually due before investing. The due date is January 30, 1994, and they expect to fully meet the minimum amount projected of $2,550,000. In the event that minimum is not met, a number of meetings have been held with the Kehls and the founder group to determine where the needed money would come from. It is their commitment not to allow this project to fail as a result of the failure of the public offering. Mr. Hoyer stated that they are looking at hard cash equity of at least 50 - 60 percent of the total project costs, and feels that amount is attainable.

Chair May stated that to her knowledge, SIRRC had never turned in their portion of the original Riverboat License. She asked that in order to keep the process simple, so that licenses begin in sync with one another, they turn in the original license. Mr. Enke stated that he would do so.

Mr. Hirsch stated that items requested for licensure had been provided as requested: bond; variance from zoning board; and that final structure of funding and personnel would be provided soon. Mr. Hirsch stated that traditionally the start day of operations has been the start date of the license, and asked if that date would be agreeable to SIRRC and Catfish Bend. Mr. Enke stated that the date of the maiden voyage would be a good start date.

Commissioner Canella made a motion to approve the application of SIRRC/Catfish Bend subject to the return of the original license by SIRRC. Motion was seconded by Commissioner Blair. Motion approved unanimously. (See Order 94-4)

Commissioner May called up the next item on the agenda, the 1994, Excursion Season and license renewal for the Mississippi Belle II. Mr. Hirsch discussed the renewal application for the Mississippi Belle II and Clinton County Gaming Association along with the request for a delay in the summer cruising schedule. Mr. Hirsch stated that it was basically the same as the original application and they had provided all information as requested; an increased bond and information regarding Iowa products used on the boat. Mr. Hirsch recommended approval.

Ken Bonnet, President of the Mississippi Belle II stated that their new boat was under construction and they were hoping for an August 1, 1994, delivery. Mr.Bonnet stated the new facility would have a dining capacity of 350 people and they hoped the patrons would look at the facility as an overall package and not just as a gambling facility. Mr. Bonnet informed the Commission that their attendance and win currently was up approximately 30% over the previous year.

Chair May commended the Mississippi Belle II, stating that approximately 86% of their employees were Iowa residents.

Chair May entertained a motion to approve the renewal license of Clinton County Gaming Commission/Mississippi Belle II for April 1, 1994, through March 31, 1995, and also approve the delay in the summer cruising schedule. Commissioner Blair so moved with Commissioner Sealock seconding the motion. Motion passed. (See Order 94-5)

Mary Ellen Chamberlain, President of the Riverboat Development Authority, stated that Riverboat Development Authority had signed a new contract with the President Riverboat for a license renewal. She stated that they have had a profitable and friendly relationship with their operator and their community. She stated that they are very pleased with their contract extension and requested the Commission approve their contract renewal.

Commissioner Sealock commended Riverboat Development Authority and the President Riverboat for following through with their promises for economic development and creation of jobs and donations to non-profit organizations.

Chair May commented that 62% of the President Riverboat employees are Iowa residents.

The Chair entertained a motion to approve the license renewal of Riverboat

Development Authority/President Riverboat Casino for April 1, 1994 through March 31, 1995, and the delay in the summer cruising schedule. Commissioner Sealock so moved with Commissioner Canella seconding the motion. Motion passed. (See Order 94-6)

Commissioner May called up the next item on the agenda, Mississippi Belle II amendment to the Operating Agreement. Mr. Hirsch stated the amendment simply defines the area, mutually agreed upon between the nonprofit and the boat operator, to house an automatic teller machine. This amended change was needed to comply with branch banking regulations.

Commissioner Sealock moved to approve the amendment to the Operating Agreement with Commissioner Blair seconding the motion. All in favor. (See order 94-7)

Chair May called the next item on the agenda, Contract Approvals. Mr. Hirsch stated that the contracts for the Mississippi Belle II relate to the new kitchen facilities. The R.G.F. Co., contract is for the purchase of the building and remodeling to the building; and the IGT contract completes the procedures needed to finalize the trading in of the gaming equipment to be resold to Catfish Bend. Mr. Hirsch recommended approval of these contracts.

Commissioner Canella made a motion to approve the contracts between Mississippi Belle II and R.G.F. Co., IGT. Motion was seconded by Commissioner Blair. Motion passed. (See Order 94-8)

Mr. Hirsch discussed five contracts for GDREC which consisted of Dubuque Casino Belle, Inc., a 24-month lease for the portside facility; Trans Sierra Communications, closed circuit surveillance systems; C. Baxter, Jr. & Associates, Marine consultant and architect; Hopeman Brothers, Inc., vessel interior refurbishment and installations; and Money Processing Consultants, Inc. for tokens, and miscellaneous counting and wrapping equipment. Mr. Hirsch recommended approval of these contracts.

Commissioner Canella moved to approve the GDREC contracts with Commissioner Blair seconding the motion. All in favor. (See Order 94-9)

Mr. Hirsch discussed the thirteen contracts for approval by the President Riverboat. These contracts included: C.J. Investments, Inc., for liquor; Coca Cola Bottling, Beverage and CO-2; Custom Fuel Services, #2 diesel fuel; Dav-N-Rock Meat & Poultry; Dimensional Graphics, Assorted printed materials; Fidlar Companies, office supplies and printing; Hawkeye Food Systems, Inc., food and small wares; Parker Distributing Company, diesel fuel; Rock Island Distributing Company, candies, sundries cigarettes, etc; Thoms Proestler, food small wares and equipment; Vanguard Distributing Corp, beer; Walter Latham Co., direct mail services; and Wolfe Beverage Co., beer. Mr. Hirsch recommended approval and stated that most of these companies had been providing services since the original licensing date. The President elected to submit all contracts anticipated to exceed $50,000 for 1994 at this time.

Commissioner Canella moved to approve the above named contracts with Commissioner Blair seconding the motion. All in favor. (See Order 94-10)

Linda K. Vanderloo, Director of Racing and Administration for IRGC, discussed the contract approvals for Bluffs Run. She recommended approval of contracts with Post Time Publications, Inc. for programs, and Line-True Photo's Inc., for photo finishes.

Commissioner Blair moved to approve the two contracts for Bluffs Run. The motion was seconded by Commissioner Sealock. Motion passed. (See Order 94-11)

Chair May called up the next item on the agenda which was the Staff recommendations for proposed legislation. Mr. Ketterer discussed the staff recommended changes for proposed legislation in order to make IRGC regulation more effective, avoid misleading the public, and remove outdated or unnecessary requirements. (See attached)

Chair May entertained a motion to approve staff recommended changes to proposed legislation. Commissioner Canella so moved with Commissioner Sealock seconding the motion. Motion passed unanimously. (See Order 94-12)

Commissioner Blair stated that he wanted to take this opportunity to thank Commissioner May and the other Gaming Study Panel for their hours of research and commitment to the Gaming Study. He asked whatever happened with the results the panel reached.

Chair May stated that she has received no communication in connection with research provided and at this point the status is unknown.

Commissioner Blair stated that he feels IRGC had achieved the original goals of the legislation. However, competition from outside the state, as well as Indian gaming competition seems to have set into motion severe economic forces that affect Iowa's licensees. In terms of regulation of these industries, the Commission was committed to the goals of economic development, tourism, job creation and tax revenues which have been achieved. Commissioner Blair explained that it has nearly come to a point where we cannot effectively continue to meet those goals. With all the research and time involved in trying to find a solution to control these issues, it seems that these issues are not being discussed. Commissioner Blair stated again that he would like to thank Commissioner May and the Gaming Panel for everything they have done to remind us of our goals, find solutions and continue to achieve these goals.

Chair May stated that this is a very emotional issue and that the only thing that the Commission can do is to keep a focus on the facts and issues and continue to try to provide the information necessary to come to a logical conclusion.

Otto Steele, member of Citizens for a Gambling Free Government, asked Mr. Ketterer to comment on his appearance before a legislative subcommittee, yesterday to recommend that the state allocate money for regulation of the indian casinos.

Mr. Ketterer explained that the legislative subcommittee requested Chuck Sweeney, Director of the Department of Inspections and Appeals, to give a report relating to proper and correct negotiation with the tribes. Mr. Sweeney asked him to assist with the questions concerning what was being done to monitor the compacts. Mr. Ketterer stated that the way he understood it, the legislature felt that Iowa should not interfere with the tribal casinos without requiring the same things we were requiring from the riverboats. We do not regulate the indian casinos; we only monitor their compacts. The tribes, as sovereign entities, have their own tribal commissions. The difficulty for the Commission, as well as any state agency, is that we cannot assure Iowans that go to the Indian casinos that the casinos will be regulated in the same manner as the riverboat casinos. There seems to be some public policy considerations that should protect Iowans going in there. This creates a very difficult situation when one branch of government is saying we should not spend money and/or give the appearance of regulation and another branch saying there should be some type of protection for Iowans who go into those casinos. There needs to be some type of consensus between the two branches of government as to how they wish to handle this.

Mr. Steele stated that he would hope that there would be stronger or increased regulations on the riverboats should the limits be raised, such as more law enforcement, and considerations for the growing gambling addictions and other types of problems.

Mr. Ketterer welcomed any input from Mr. Steele related to those items.

Chair May stated that regulatory time would be freed up by the raising of limits, because all the time and energy spent trying to enforce the limits could be well spent by focusing on the integrity of the games.

Chair May called up the next item on the agenda which was the appointment of the administrator. Commissioner Canella moved to appoint Jack P. Ketterer as Administrator of the IRGC from May 1, 1994, to April 30, 1998. Commissioner Sealock seconded the motion. Motion unanimously passed. (See Order 94-13)

Mr. Ketterer stated that he appreciated the Commission's vote of confidence, and felt that much was owed to a very capable staff.

Chair May stated that the March Commission meeting currently set for March 17, 1994, would need to be rescheduled. After deliberation among the Commissioners, it was decided the next meeting would be held March 3, 1994.

Meeting was adjourned.

Minutes taken by Debbie Baker

IOWA RACING AND GAMING COMMISSION
TELEPHONIC MEETING
FEBRUARY 4, 1994

The Iowa Racing and Gaming Commission (IRGC) held a telephonic meeting on Friday, February 4, 1994, at the Commission Office in Des Moines, Iowa. Included in the meeting were Chair, Lorraine May; Vice-Chair, Dick Canella; and Commissioners Rita Sealock and Del Van Horn; Commission Staff Jack Ketterer, Administrator; Linda Vanderloo, Director of Racing and Administration; Debbie Baker, Recording Secretary; Bev Zylstra, Legislative Representative; Tom Timmons, Prairie Meadows; Walt Pyper, Bluffs Run.

Commissioner Van Horn moved to approve the agenda. Commissioner Canella seconded the motion with all in favor.

The next item on the agenda was the simulcast contract between Bluffs Run and Prairie Meadows. Walt Pyper, General Manager of Bluffs Run, stated that arrangements had been discussed with Tom Timmons to pick up from Prairie Meadows the simulcast signals of Santa Anita in California; Gulfstream in Florida; and Oaklawn in Hot Springs, Arkansas, beginning February 9, 1994. The arrangement would be to extend the contracts with Prairie Meadows to allow forwarding the simulcast signals of the aforementioned tracks to Bluffs Run. Prairie Meadows would receive a fee of 1% of the handle at Bluffs Run plus one quarter of one percent totalizer fee. Bluffs Run would receive regular breakage allocated on a percentage of handle and one percent of the triple handle for the Iowa Breeders Fund. Bluffs Run would also receive camera ready artwork for programs from Prairie Meadows. Mr. Pyper stated Bluffs Run would give their kennels the amount they would get if they were simulcasting greyhounds into Prairie Meadows.

Mr. Pyper stated that Aksarben's admissions have been in the range of 700 to 1,400 people and the per capita per admission has been approximately $200.00. Mr. Pyper explained he felt confident that Bluffs Run could expect at least 50% of those admissions to attend Bluffs Run with this simulcasting agreement. He stated this could result in a significant financial benefit for the track.

Mr. Pyper addressed Aksarben's claim that this type of contract is illegal. He stated that according to the Interstate Horse Racing Act of 1978, the contract is in compliance. However, during a live season, restrictions apply prohibiting other tracks from simulcasting if they are located within a sixty mile radius of the track and the governing horse association. This rule has been legally challenged and found unconstitutional. Before Aksarben begins their live season in May, the claim will be reviewed and a decision will be made as to how to proceed. Mr. Pyper agreed to have Bluffs Run attorney, Jim Campbell, send a document to the IRGC which would address compliance with the Interstate Horse Racing Act during the live racing at Aksarben per Iowa's statute.

Tom Timmons, Prairie Meadows, stated in response to totalizer time lag question raised by Mr. Ketterer, Bluffs Run's computer system is connected into Prairie Meadows and the moment the computer systems are locked in, Bluffs Run will instantaneously become locked in also. There should be no time lag.

Commissioner Canella moved to approve Prairie Meadows forwarding the simulcast signal of horse races from Santa Anita, Gulfstream, and Oaklawn to Bluffs Run. Commissioner Sealock seconded the motion with all in favor. (See Order 94-14)

Chair May called the next item on the agenda which was future simulcast contracts being delegated to the Commission Administrator for approval since the contracts received for simulcasting approval are uniform, and state similar information. Chair May entertained a motion that simulcast contracts be approved by the Commission Administrator with notification to the Commission members of such an approval. Commissioner Canella so moved with Commissioner Van Horn seconding the motion. Motion passed. (see Order 94-15)

Commissioner Canella moved for adjournment. The motion was seconded by Commissioner Sealock. All in favor.

MINUTES TAKEN BY DEBBIE BAKER

IOWA RACING AND GAMING COMMISSION
MINUTES
MARCH 3, 1994

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, March 3, 1994, at 9:30 a.m., at Prairie Meadows in Altoona, Iowa. Commissioners present were: Chair Lorraine May; Vice-Chair, Dick Canella; and members Rita Sealock, David Blair and Del Van Horn.

Chair May called the meeting to order and entertained a motion to approve the agenda. Commissioner Canella so moved with Commissioner Van Horn seconding the motion. Motion passed.

Chair May entertained a motion to approve the minutes of the January 19-20, 1994 meeting, and February 4, 1994, telephonic meeting. Commissioner Van Horn so moved with Commission Sealock seconding the motion. Motion passed.

Chair May called upon Linda K. Vanderloo, IRGC Director of Racing and Administration, to discuss the Horse Racing Promotion Fund. Ms. Vanderloo explained that the monies for the 1994 fund totaled $4,542.50, and that three entities, the Iowa Quarter Horse Racing Association (IQRA), the Iowa Thoroughbred Breeders and Owners Association (ITBOA) and Iowa State University (ISU) Racing Chemistry had requested to be considered in the allocation of these funds.

Ms Vanderloo recommended the 1994 monies be divided between the IQRA and ITBOA with IQRA receiving funds generated from quarterhorse races ($272.92) and the ITBOA receiving funds generated from thoroughbred racing ($4,269.58) requiring both organizations provide the Commission with an annual accounting of the expenditure of these funds, and that the IQRA, ITBOA and the ISU Chemistry Lab meet during the year to determine how the funds for 1995 might be utilized for mutual beneficial research. Commissioner Sealock so moved with Commissioner Blair seconding the motion. Motion passed unanimously. (94-16)

Chair May called up the next item on the agenda, Notice of Intended Action for proposed rule changes. Peter Scarnati, Racing Secretary at Prairie Meadows (PM), stated that PM was requesting amendments to rules to allow for a minimum wager of $1 on all exotic wagers; change the time at which trifecta wagering must be cancelled if there are fewer than eight betting interests, from the time the horses leave the paddock for the post to the closing time of entries; and change to allow for uncoupled entries by a common trainer. Mr. Scarnati commented as for the need for each of these proposed amendments.

Jack Ketterer, Administrator for the IRGC, stated that staff would recommend approval of all proposed rule changes with the exception of changing the time at which trifecta wagering must be canceled. Mr. Ketterer felt that there was a better way of changing the rule that both the commission and the track could agree upon and stated that these amendments concerning trifecta wagering should have further study and assessment and did not recommend that those changes be Noticed. Tom Timmons, General Manager at PM, agreed to remove the request for rule changes on trifecta wagering until further discussion could be held.

Chair May entertained a motion to file a Notice of Intended Action on amendments to 8.2(20), 8.3(13)h, 10.1(99D0, 10.5(2)c(1)(3)(4) and 10.5(2)c(4), amendments to the canceling of trifecta wagering. Commissioner Canella so moved with

Commissioner Blair seconding the motion. Motion passed unanimously. (94-17)

Chair May called the next item on the agenda for discussion, the application of the Interstate Horse Racing Act (IHRA) to the interstate horse racing simulcast at Bluffs Run. Chair May explained that the question was raised regarding the application of the IHRA and the effect on the simulcast from PM to Bluffs Run.

Jeff Farrell, Attorney General's Office, stated the IHRA subsection requiring approval of tracks operating within a 60 mile radius of an off-track betting location, has been challenged as unconstitutional. The growing controversy has resulted in a lawsuit in Kentucky which is currently on appeal. Mr. Farrell stated that the IRGC was obligated by statute to be certain that approval was obtained from appropriate "racing officials." However the Commission could properly and reasonably determine that the "racing officials" from whom approval was required were the racing officials of the host track and did not include or require the approval of neighboring tracks, whether actually racing or not.

Tom Flynn, counsel for PM, stated that there have been five cases of litigation over the IHRA rule. Mr. Flynn suggested that consent was needed only from the host track, and the commissions governing the host track and guest track.

John McHale, counsel for Bluffs Run, stated that he was in agreement with Mr. Flynn.

Commissioner Blair stated that he did not feel it was the intention of the Iowa Legislature to give veto power to public or private interests in foreign jurisdictions over simulcasting in Iowa. Commissioner Blair explained that it was his belief that as long as the agreement was properly made and approved by the IRGC and host track and racing commission of the host track, the agreement was within the parameters of the federal and state regulations.

Chair May stated that no action was necessary by the commission, however the discussions involving the IHRA should be considered approval of the simulcasting arrangement. She clarified that the item in question was the interpretation of "racing official" in Iowa Code section 99D.11(6)b which references the IHRA. The contract between Bluffs Run and Prairie Meadows is appropriate as it currently exists, and the opening of Aksarben horse track in Omaha, Nebraska will not alter that approval.

Chair May called upon Bruce Wentworth, General Manager at Dubuque Greyhound Park (DGP) to discuss the season approvals. Mr. Wentworth stated that they are slated to begin living racing on May 7, 1994, and request approvals now as the next meeting would be too close to the beginning of their live season. He also continued that dependent upon the decisions of the legislature, they may ask for changes to their requests today at the April Commission meeting.

Ms. Vanderloo stated that approval was recommended regarding DGP's request for season approval which included the following items: purse distribution; purse supplements for Iowa-breds; approval of stewards, operating and racing officials (subject to completion of background checks); grading systems; schedule and wagering format; equipment; security plan; and performance bonds.

Terry Harrmann, President of Dubuque Racing Association commented that as the first President of the Dubuque Racing Association, and a member of the board

since it began, he was coming before the Commission to inform them of the precarious situation of Iowa the tracks. He stated that it was absolutely vital to the jobs of at least 150 people in Dubuque, and thousands across the state of Iowa, that the legislature pass the gambling legislation before them. In doing so, additional money would also become available to the state.

Chair May entertained a motion to approve the season approval subject to background checks. Commissioner Canella so moved with Commissioner Sealock seconding. Motion passed. (94-18)

Mr. Ketterer discussed and recommended approval of the season approval for Prairie Meadows. Items included were: minimum purse, purse supplements for Iowa-breds, approval of stewards, department heads and racing officials, grading system, schedule and wagering format, equipment security plan, and certification. He stated that their approvals were for a 90 day racing season. However, should legislation reduce the day requirement, they would come back before the commission to request a 60 day meet. Also included, was a request for approval of the following contracts:

- Iowa Division of Horseman's Benevolent and Protective Association.
- Iowa Quarter Horse Racing Enterprises, Inc.
- Medic One Ambulance Service Company of Iowa
- Cool Walk, Inc.
- Iowa Waste Systems Corp.
- Coady Photography

Chair May entertained a motion to approve Prairie Meadow's season approvals subject to background checks and contracts. Commissioner Sealock so moved with Commissioner Van Horn seconding the motion. Motion passed. (94-19)

The next item on the agenda was an update on the Sioux City Riverboat Corporation. Chair May called upon Arlene Curry, Attorney and colleague of Bruce Crary, (Sioux City Riverboat Corporation's attorney) to discuss the purchase agreement and amendment with the Bennett Management Development Group delaying the sale date from January to April 1, 1994. She stated that Bennett and Sioux City Riverboat corporation had come to a verbal agreement to extend the sale another 30 days which would change the date to May 1, 1994. The intention of this delay is to give additional time to provide documentation and negotiate finalized plans on the lease back of the boat by Sioux City Riverboat Corporation, with the possibility of an outright purchase. Negotiations should be completed by the April commission meeting.

Chair May entertained a motion for approval of the purchase agreement and amendment subject to documentation of the verbal agreement of the 30 day extension. Commissioner Canella so moved with Commissioner Van Horn seconding the motion. Motion passed. (94-20)

The next item discussed was the 1994 excursion season approval for the Sioux City Sue. Betty Strong, President of Missouri River Historical Development, who was present at the meeting, gave verbal approval for the request for the 1994

excursion season. Mr. Hirsch, IRGC Director of Riverboat Gambling, stated staff recommended approval. Chair May entertained a motion for approval of the excursion season. Commission Blair so moved with Commissioner Canella seconding. Motion passed. (94-21)

The next item on the agenda was an update on the financial package for Catfish Bend, Inc. Ken Bonnet, President of the Mississippi Belle II, stated the public offering had reached its conclusion with approximately 757 investors. Mr. Bonnet commented that approximately $1,300,000 was raised, and in addition, a commitment from the original investor group was obtained to fund additional monies to meet required capital of approximately $6,500,000 by supplementing an additional $315,000.00. The Kehls are increasing their share of ownership to 50 percent in order to limit the debt to not more than $3.7 million.

Chair May called up the next item on the agenda, Greater Dubuque Riverboat Entertainment Corporation (GDREC), and recognized, Joe Zwack, President. Mr. Zwack stated that he had, as requested, documentation of a letter from Caterpillar extending their date of commitment to April 15, 1994, and a contract from Bollinger Ship Yard to provide financing for one year. Mr. Zwack explained that during the past 72 hours, financial commitments had increased an additional $700,000 in equity capital, and a promissory note for several hundred thousand dollars was recently extended in writing. Total equity amount is currently approximately 3.5 million dollars total. Approval of these items would be requested at the April meeting.

Mr. Zwack presented his 1994 excursion season schedule and explained that the original plan was to have three cruises per day however they are now requesting four cruises per day. Mr. Hirsch stated that he had looked over their request, and recommended approval.

Chair May entertained a motion to approve the excursion schedule for the Dubuque Diamond Jo. Commissioner Van Horn so moved with Commissioner Sealock seconding the motion. Motion passed. (94-22)

Chair May called the next item on the agenda, contract approvals. Mr. Hirsch stated that the Mississippi Belle II requested approval of the following contracts:

- Kirchhoff Distributing Co. for beverages
- Hawkeye Beverage, Inc. for beverages
- Vallet Food Service for food
- Johnson & Higgins of Ohio for Insurance on boat and crew
- Clinton National Bank for credit

Chair May entertained a motion for approval of the aforementioned contracts. Commissioner Van Horn so moved, with Commissioner Sealock seconding the motion. Motion passed (94-23)

Mr. Hirsch stated that The President Riverboat Casino requested approval of the following contracts:

- Brennan Marine Company for moving barges
- The Future Now for computer hardware and software
- GDC, Inc. for metal gaming tokens
- JF Brennan Co. for moving of barge
- Wasker, Dorr, Wimmer & Marcouiller for legal services and legislative monitoring.

Chair May entertained a motion for approval of the aforementioned contracts. Commissioner Van Horn so moved, with Commissioner Blair seconding the motion. Motion passed. (94-24)

Mr. Hirsch stated that the Dubuque Diamond Jo requested the approval of the following contracts:

- IGT for slot machines
- Bally Gaming, Inc., for Pro series upright slots and custom laminate
- Dillon Leasing for lease funds for money processing and surveillance equipment

Chair May entertained a motion for approval of the aforementioned contracts. Commissioner Blair so moved, with Commissioner Van Horn seconding the motion. Motion passed. (94-25)

Ms. Vanderloo discussed Dubuque Racing Association's request for approval of the Sport View Television Corp. for closed circuit television services, and Mr. Hirsch discussed Roberts River Rides, Inc., for lease of a passenger loading dock.

Chair May entertained a motion for approval of the aforementioned contracts. Commissioner Canella so moved, with Commissioner Sealock seconding the motion. Motion passed. (94-26)

Commissioner Van Horn moved for adjournment, which was seconded by Commissioner Blair. All in favor.

Minutes taken by Debbie Baker

IOWA RACING AND GAMING COMMISSION
MINUTES
APRIL 21, 1994

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, April 21, 1994, at 9:30 a.m., at Waterloo Greyhound Park in Waterloo, Iowa. Commissioners present were: Chair, Lorraine May; Vice-Chair, Dick Canella; and members Rita Sealock, David Blair and Del Van Horn.

Chair May called the meeting to order and entertained a motion to approve the agenda. Commissioner Sealock so moved with Commissioner Blair seconding the motion. Motion passed.

Chair May introduced Augie Masciotra, General Manager at Waterloo Greyhound Park (WGP). Mr. Masciotra welcomed the Commission to WGP. He stated that he wanted to thank the Commission for their support and guidance toward the success of the pari-mutuel industry. Mr. Masciotra stated that on behalf of the entire industry, he wished to thank Commissioner Blair for his dedication and service to the Commission. He commended Commissioner Blair for being fair, honest and straight forward.

Chair May entertained a motion to approve the minutes of the March 3, 1994, Commission Meeting. Commissioner Canella so moved with Commissioner Van Horn seconding the motion. Motion passed unanimously.

Chair May called upon Bruce Wentworth, General Manager at Dubuque Greyhound Park (DGP), to discuss requests for kennel approvals. Mr. Wentworth introduced Michael L. Holton, Director of Racing at DGP. Mr. Holton stated that he was very pleased that eleven out of the fourteen kennels seeking approval are Iowa based kennels. Chair May stated that one of the purposes in passage of the legislation, was to create a greyhound industry in the state. At that time, there were fewer than five Iowa based kennels in the state of Iowa. Eleven Iowa based kennels at DGP alone, is indicative of the success of the pari-mutuel legislation in creating a quality agricultural industry.

Linda Vanderloo, Director of Racing and Administration for the IRGC, recommended approval of DGP kennels. Chair May entertained a motion to approve the kennels as presented by DGP. Commissioner Blair so moved with Commissioner Canella seconding the motion. Motion passed unanimously. See Order #94-27

Mr. Holton thanked Commissioner Blair for his contribution to the Commission and meeting the Commission's objective to ensure the integrity and quality of racing in Iowa.

Chair May called upon Tom Timmons, General Manager of Prairie Meadows (PM), to discuss their request to change their live racing season from 90 days to 60 days. Mr. Timmons stated that the first half of the live season would be run four days per week and the last half of the live season they would run five days per week. Mr. Timmons explained that this change would also affect the minimum purse by increasing the purse from $1,500 to $2,000.

Mr. Timmons indicated that Fonner Park's season begins May 1, 1994, and the

Woodlands does not begin their season until August 10, 1994. PM dates allow for a pocket in the middle that PM can comfortably settle into to reap the most benefit and allow the horsemen to benefit as well.

Chair May entertained a motion to approve the changes in the 1994 Prairie Meadows Racing Season. Commissioner Van Horn so moved with Commissioner Sealock seconding the motion. Motion unanimously passed. See Order #94-28

Mr. Timmons took the opportunity to express his thanks to Commissioner Blair for being an industry leader.

Commissioner Blair commented that it had been his pleasure both personally and professionally to work with his colleagues on the Commission and Commission staff. He stated that the licensees and their representatives have been terrific and great people with whom to work. Commissioner Blair welcomed Nancy Whittenburg to the Commission stating that it was good to know that his seat, traditionally known as the 'Bud Pike Memorial Chair', would be filled by Ms. Whittenburg. Commissioner Blair explained that filling the Bud Pike Memorial Chair involved plain talk, and speaking out honestly on issues that are important to the industry, which is an honorable tradition.

Chair May entertained a motion to enter into executive session for review of background investigations conducted by the Division of Criminal Investigation (DCI), and for review of ongoing litigation involving the National Cattle Congress. Commissioner Sealock so moved with Commissioner Van Horn seconding the motion. All in favor.

Following Executive Session, Chair May reconvened the meeting and called upon Jack Ketterer, Administrator for IRGC, to discuss the adjustment in admission fees. Mr. Ketterer stated with the Dubuque Diamond Jo coming aboard in the near future, an adjustment would be needed in the admission fees. Under the admission fee proposal, each of the four boats would contribute 25% of the costs involved with the regulation of excursion boats in Iowa. Chair May entertained a motion to approve the revised admission fee schedule. Commissioner Canella so moved with Commissioner Blair seconding the motion. Motion passed. See Order #94-29

Chair May called upon Terry Hirsch, Director of Riverboat Gambling for IRGC, to discuss the stock sale agreement between Sioux City Riverboat Corporation and Gaming Development Group; the Missouri River Historical Development consent for stock sale; City of Sioux City consent for the stock sale; lease agreement for the Sioux City Riverboat Corporation and Gaming Development Group; and the tax payment guarantee bond. Mr. Hirsch recommended approval of the tax payment guarantee bond and management agreement through May 3, 1994.

Chair May entertained a motion for approval of the tax payment guarantee bond, management agreement though May 3, 1994; and gave the Commission Staff authority to approve an extension of the lease arrangements through the end of May. Commissioner Blair so moved with Commissioner Canella seconding the motion. Motion passed unanimously. See Order #94-30

Mr. Hirsch then discussed and recommended approval of the following contracts submitted by Joe Zwack, President of the Dubuque Diamond Jo, Donald Iverson investor loan agreement; memorandum of extension on loan agreement with Donald Iverson; Bollinger Quick Repair loan agreement; Caterpillar Financial Services,

letter of extension; and the Mikohn Gaming Corporation gaming signage. Mr. Zwack reminded the Commission that the contracts he was discussing had been previously discussed at the March 3 meeting, dealing with financing of the Dubuque Diamond Jo.

Chair May entertained a motion to approve the investor loan agreement with Donald Iverson and Memorandum of Extension on Loan Agreement with Donald Iverson; Bollinger Quick Repair; Caterpillar Financial Services letter of extension; and Mikohn Gaming Corp. Commissioner Sealock so moved with Commissioner Van Horn seconding the motion. Motion passed unanimously. See Order #94-31

Chair May requested Mr. Zwack to commit himself to get the tax payment guarantee bond to the Commission staff at least seven days before beginning operations of the Dubuque Diamond Jo.

Mr. Wentworth, Dubuque Racing Association, discussed the seventh amendment to the Operating Agreement between the Dubuque Racing Association and the Greater Dubuque Riverboat Entertainment Corporation. He stated that this amendment is intended to delay the minimum payment until May 1st. Mr. Wentworth explained that an eighth amendment would be forthcoming which would spread the minimum loan repayment due from the beginning of the year over the life of the contract.

Mr. Hirsch recommended approval of the seventh amendment to the Operating Agreement. Commissioner Blair so moved with Commissioner Canella seconding the motion. Motion was unanimously passed. See Order #94-32

Chair May then called upon Mr. Hirsch to discuss the Mississippi Belle II contract approval request. Mr. Hirsch stated that he recommended approval of the Vivid Incorporated contract for billboards. Commissioner Van Horn so moved with Commissioner Canella seconding the motion. Motion passed unanimously. See Order #94-33

Chair May called the next item on the agenda, administrative business. On behalf of the Commission and staff, Chair May wished Commissioner Blair a fond farewell, and stated that he would be missed, both personally and professionally. Commissioner Blair stated that he echoed the same sentiments. Chair May then welcomed Nancy Whittenburg to the Commission stating that she was looking forward to working with her.

Commissioner Sealock moved for adjournment with Commissioner Blair seconding the motion. Meeting was adjourned.

Minutes by Debbie Baker

STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR

RACING AND GAMING COMMISSION
JACK P. KETTERER, ADMINISTRATOR

IOWA RACING AND GAMING COMMISSION
TELEPHONIC MEETING
MAY 11, 1994

The Iowa Racing and Gaming Commission (IRGC) held a telephonic meeting on Wednesday, May 11, 1994, at the Commission Office in Des Moines, Iowa. Participating in the meeting were Chair, Lorraine May; Vice Chair, Dick Canella; and Commissioners Rita Sealock, Del Van Horn, and Nancy Whittenburg; Commission Staff Jack Ketterer, Administrator; Linda K. Vanderloo, Director of Racing and Administration; Karyl Jones, Executive Officer; Terry Hirsch, Director of Riverboat Gambling; Julie Herrick, Recording Secretary; and Bill Brosnahan, DCI.

Commissioner May called the meeting to order at 9:30 A.M.

Commissioner Sealock moved to approve the agenda. Commissioner Canella seconded the motion, with all in favor.

The next item on the agenda was the approval of the stock sale agreement between Sioux City Riverboat Corporation and Gaming Development Group, the Missouri River Historical Development's consent for the stock sale agreement; Sioux City's consent to the stock sale agreement; and the lease agreement between Bennett Management and Development and Sioux City Riverboat Corporation/Gaming Development Group. These items were discussed in Executive Session during the April 21, 1994, meeting held in Waterloo. During that Executive Session, concerns were expressed regarding the shares and interviews which had not yet been conducted. Documentation was received concerning the shares and the interview completed. Bill Brosnahan indicated he was satisfied with both.

Commissioner May asked if there were any other issues which needed to be clarified prior to a vote being taken. No further issues were raised for clarification.

Commissioner Van Horn made a motion to approve the four contracts designated on the agenda. Commissioner Whittenburg seconded the motion which was approved unanimously on a roll call vote. (See Order No. 94-34)

Commissioner Canella moved for adjournment. Commissioner Whittenburg seconded the motion. Motion passed unanimously. The meeting was adjourned at 9:40 A.M.

MINUTES TAKEN BY JULIE HERRICK

IOWA RACING AND GAMING COMMISSION
MINUTES
MAY 18 AND 19, 1994

The Iowa Racing and Gaming Commission (IRGC) met on Wednesday afternoon, May 18, 1994, at the Valley West Inn in West Des Moines. Commissioners present were: Chair, Lorraine May; Vice-Chair, Richard Canella; and members Rita Sealock and Del Van Horn.

Chair May called the meeting to order at 1:20 P.M. and entertained a motion to approve the agenda. Commissioner Sealock moved to approve the agenda, with Commissioner Canella seconding the motion. The motion passed unanimously.

The next item on the agenda was the hearing for John Schegan regarding his ability to obtain licensing in order to be a shareholder/owner for the Dubuque Diamond Jo. Legal counsel for Mr. Schegan, John R. Sandre, submitted a request for a continuance to the Commission. Testimony presented to the Commission on Wednesday afternoon was to determine whether or not the continuance should be granted. The following witnesses were called to testify: John Schegan, Doug E. Gross, and Joseph P. Zwack. The Commission determined that a continuance was in order. The hearing will be held on Monday, June 20, 1994, beginning at 9:00 A.M. A transcript of the hearing is available in the Commission office.

The meeting was recessed at 5:15 P.M., and will reconvene at 9:00 A.M., Thursday, May 19, 1994, at the Ramada Inn - Westmark Convention Center, West Des Moines, Iowa.

Chair May called the meeting to order at 9:10 A.M. Commissioner Nancy Whittenburg joined the meeting.

Chair May entertained a motion to approve the minutes of the April 21, 1994, Commission meeting and the May 11, 1994, telephonic Commission meeting. Commissioner Canella so moved with Commissioner Sealock seconding the motion. The motion passed unanimously.

Chair May called upon Jack Ketterer, Administrator of the IRGC, to discuss the various rule filings before the Commission. The rule changes are necessitated by a variety of reasons, as well as changes in legislation which became effective upon signing. There are several items which needed clarification.

The first set of rules discussed were amendments to Chapters 8 and 10 which were previously discussed at the March Commission meeting which deal with horse racing rules. They are to be Final Adopted

today. There is one change that has been added from what was approved in the Notice of Intended Action. This was to clarify that when we refer to the same owner with respect to two different horses, we are talking about at least a 10% common ownership. The first item is the $1.00 minimum wager, the second is that entries in mutuel fields are now allowed in superfecta races, the third is the definition of the entry which excludes two or more horses that are trained by the same trainer from being an entry. It currently is only two or more horses with common ownership of 10% or more. Items 3, 4, and 5 deal with what happens with common owners in horse races. They must be coupled as a single wagering interest. When there are common trainers it is up to the discretion of the stewards whether or not they are coupled. The last one involves the exclusion of a single entry whether an owner or trainer has more than one horse entered in a race, those two horses can not exclude a single entry from being allowed to draw in and start in any of the races.

Chair May called for any questions or public comment concerning the Final Adopt Amendments to Chapters 8 and 10. Hearing none, Chair May entertained a motion to Final Adopt the amendments to Chapters 8 and 10. Commissioner Whittenburg moved to adopt the amendments to Chapters 8 and 10, with Commissioner Canella seconding the motion. The motion passed unanimously. (See Order 94-35)

Chair May informed the Commissioners and the public of the enormous amount of staff time in preparing the proposed rules. She also informed them that copies of the proposed rules were provided to a number of people who would have an interest in the rules themselves and how they may be drafted. These included both licensees and individuals who are perceived to be anti-gaming interests so that we could obtain as much input as possible in the preparation of the rules. We received a number of oral comments. In addition, we received one written filing - a letter from Antonio Russo. We have had an opportunity to review the written comments along with the oral comments, and that information is being taken into consideration with the adoption of the rules themselves. One of the concerns that always arises, is that some feel they only have a week or two to respond to the proposed rules; however, there is a substantial amount of time remaining for individuals to review any of the rules about which they have any concern. The purpose of the action today is largely the filing of Notice of Intended Action and there will be opportunities for public hearing if anyone has any further input.

Chair May called Mr. Ketterer to review the next set of rules. Before beginning his summary, Mr. Ketterer indicated that copies of the rules were also provided to the Iowa Greyhound Association, the Quarterhorse and Thoroughbred Breeders Association, the HPBA, and

other interested groups. Some of them have been involved for quite some time. There will be approximately 100 days for additional input on these rules after this meeting.

Mr. Ketterer informed the Commissioners that the Notice of Intended Action for Chapter 13 recognizes that there is going to be somewhat of a blending between racing and gaming. This is an attempt to consolidate the occupational licensing for racing and gaming into one chapter. The only substantive change in this area is the fact that the occupational licenses were renewed 30 days before or 30 days after the end of the calendar year. Now that all the racetracks are operating on a year-round basis, occupational licenses will now be renewed 60 days prior to the end of the calendar year. The licensing chapter also incorporates some of the model rules from the Association of Racing Commissioners International which is an attempt to have more uniformity between all states involved in racing around the country. Only those that were in step with what is already being done in Iowa were incorporated.

Chair May inquired as to whether there was any public comment to the Notice of Intended Action regarding Chapter 13. Hearing none, Chair May entertained a motion for the filing of the Notice of Intended Action on Chapter 13. Commissioner Van Horn made a motion to file the Notice of Intended Action on Chapter 13 based on staff recommendation. Commissioner Sealock seconded the motion. The motion passed unanimously. (See Order 94-36)

Chair May requested that Mr. Ketterer advise the Commissioners as to the amendments to Chapters 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 20, 22, 24 and 25. Mr. Ketterer indicated that these amendments included model rules adopted by the Association of Racing Commissioners International. These amendments attempt to consolidate rules that were found in more than one chapter and consolidate in a chapter generic to both racing and gaming. There is also some general clarification and cleanup of existing rules. The rules that have more substantive changes include a rule which states that fines assessed to licensees are to be paid by the individual assessed the fine as opposed to the track or boat paying the fine. The fines are levied as a deterrent to some activity or violation of a rule. Mr. Ketterer does not feel that the deterrent effect is there if someone else pays the fine; on confirmed positive drug testing, costs shall be paid for by the licensee or the employee instead of the Commission. Another item that was discussed at the March meeting, was the minimum number of horses for trifecta wagering to occur at horse tracks - there is a rule which requires seven betting interests at the time the horses leave the paddock for the post. The amendments exclude the valet from being an official. The valet is the person who assists the jockey

and takes care of their equipment, getting the saddle and tack ready for upcoming race, and making sure the jockey is weighed in with the tack properly and assisting the trainer in saddling. The valets are still licensed and backgrounded by the Commission, but will no longer be considered an official. The last item that is substantive gives the Administrator the authority to issue a Manufacturer's and Distributor's License. There are instances where the manufacturer/distributor is licensed in other states and the background is clean, and the staff has a quicker response time to these applications. Mr. Ketterer's policy as Administrator would be that any time there is any type of question on the background, that application would be presented to the Commission in Executive Session.

Chair May called for any public comment regarding the Notice of Intended Action on Chapters 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 20, 22, 24, and 25. Hearing none, Chair May entertained a motion regarding the filing of the Notice of Intended Action. Commissioner Canella so moved, with Commissioner Nancy Whittenburg seconding the motion. The motion passed unanimously. (See Order 94-37)

Mr. Ketterer advised the Commissioners regarding the Emergency Adopt and Implement rules pertaining to Chapters 20, 21, 24, 25, and 26. These are existing rules that were superseded by HF 2179 which was passed during the recent legislative session. The following types of items are addressed in these rules, followed by a brief discussion of the excursion definitions which is now completely in the power of the Commission, as opposed to previously being dictated by Chapter 99F in the Code. Some of the items changed to comply with 99F are:

a) Added the term "racetrack enclosure" where applicable

b) Changed the wagering age from 18 to 21

c) Included language that allowed for an application fee for a license to have both a gambling and racetrack enclosure license

d) Added language requiring the application for gaming and racetrack enclosure and compliance requirements for gaming and racetrack enclosures

e) Removed the requirement for script

f) Removed the 30% space requirement for gaming operations

g) Provided for the prohibition of the use of credit cards to acquire gaming chips or tokens

h) There was a rule which required a minimum capacity requirement of 500, that has been reduced to 250 to comply with the Code, defining the excursion season and the length of the excursion

i) Allowed for the use of nickels and quarters, as well as tokens

j) Removed the wagering and loss limits

k) Added rules for tournaments and contests that require if there is any difference between the entry fees that are charged and the operator's cash equivalent cost of prizes paid that is not in excess of the total entry fees, the difference is subject to the wagering tax.

Mr. Ketterer stated that previously the excursion season was defined as being the months of April through October. There is no valid reason to change that. The Commission requires a 120-day excursion season. The staff is recommending a 100-day season that reflects the number of days between Memorial Day and Labor Day. That doesn't mean that is when the licensees would need to conduct their cruises, but pretty much characterizes what is viewed as the cruising season by the Legislature. Mr. Ketterer indicated that the spirit of the statute passed by the Legislature is that cruise excursions occur and not have only dockside gambling. Previously, in Chapter 99F, the duration of the cruise was required to be 3 hours, but that included time for passengers to embark and disembark and that was tied very closely to the $200 loss limit.

The staff is recommending that a minimum of 2 hours in transit be required. While the number of cruising days will be set at 100 days, in order to be considered a cruising day, there must be at least one cruise during that day. The staff feels that these requirements maintain the spirit of the excursion boat gambling law that there be cruising and yet provide the licensees with a great deal of flexibility to take their cruises on what days of week they choose, what months they want, and the time of day they want and still maintain the spirit of the law.

Chair May asked for any public comments in regard to the Emergency Adopt and Implement rules for Chapters 20, 21, 24, 25, and 26. There were no public comments regarding the Emergency Adopt and Implement rules for Chapters 20, 21, 24, 25 and 26 at this time.

Commissioner Van Horn asked what constituted a cruise. Mr. Ketterer replied that the new rules state that a cruise is two hours in transit. Commissioner Canella stated that in theory the boat would move away from the dock for two hours and move back into the dock. Mr. Ketterer indicated that would be up to the

Commission to decide if they wanted to put restrictions on cruises. Mr. Ketterer indicated he wasn't sure whether the rules should state that the boat was required to go so far downstream or not. He also stated that he felt if there was an indication that someone was not complying with the spirit of the statute, then that could be handled on an individual basis, but did not want to put a distance requirement in the rules due to the particular sites that each of the boats have, as each boat has a different set of circumstances.

Commissioner Canella indicated that he was not clear on the rule which states that credit cards may not be used to purchase tokens or chips. After a lengthy discussion, Chair May indicated that a more complete look could be taken at this statute at a later Commission meeting. It was decided to pull the rule amendment dealing with credit cards from the emergency rules as this is a proposed rule, not a statute.

Chair May called for any additional comments in regards to the proposed rules. Commissioner Canella returned to the definition of a "cruise". He indicated that his understanding of a cruise was that the boat had to be moved, that it could not go out 100 feet and drop anchor. He feels that a cruise means the boat has to keep moving. The proposed rule states that a cruise is two hours in transit.

Chair May called for any additional comments regarding the amendments to Chapters 20, 21, 24, 25, and 26. She suggested that the Commission proceed to emergency adopt all of the chapters with the exception of the credit card amendment, as well as filing a Notice of Intended Action with regard to all of the amendments to 20, 21, 24, 25, and 26, as there will be an opportunity before final adoption to make additional changes if desired. The credit card amendment will be included in the Notice of Intended Action, but not the Emergency Adopt rules. As there were no public comments regarding the filing of the rules, Chair May called for a motion to emergency adopt amendments to Chapters 20, 21, 24, 25 with the exception of the credit card amendments. Commissioner Sealock made the motion, with Commissioner Whittenburg seconding the motion. The motion passed unanimously. (See Order 94-38)

Chair May entertained a motion to file a Notice of Intended Action with regard to the proposed amendments to Chapters 20, 21, 24, 25, and 26. Commissioner Sealock made the motion, with Commissioner Canella seconding the motion. The motion passed unanimously. (See Order 94-39)

Chair May welcomed Commissioner Whittenburg to her first commission meeting.

Chair May introduced the matter of Occupational License Fees. Mr. Ketterer stated that the occupational license fees were consolidated to reflect the joining of racing and gaming, as well as anticipation of license applications from the racetracks. The consolidation will enable the Commission to have one license application. There was an attempt to equate the license fee with the amount of background that goes into scrutinizing the applicant prior to the license being issued. Mr. Ketterer indicated that it is important to keep the fees reasonable and accountable. There has been no increase in licensing fees since they were originally set when racing began in Iowa. Mr. Ketterer asked the Commissioners to approve the Occupational License Fees as submitted. Chair May asked if there was any public comment regarding the Occupational License Fees. Hearing none, Chair May entertained a motion in regard to the approval of the occupational license fees. Commissioner Whittenburg made a motion to approve the occupational license fees, with Commissioner Canella seconding the motion. The motion passed unanimously. (See Order 94-40)

Commissioner May called on Terry Hirsch, Director of Riverboat Gambling, to present the contracts which are before the Commission for approval.

The first contracts discussed were those for the Dubuque Diamond Jo (DDJ). Mr. Hirsch discussed the Eighth Amendment to the Operating Agreement with the Dubuque Racing Association (DRA) which takes the $500,000 payment owed from the Diamond Jo to the DRA and spreads it over a two-year period with semi-annual payments of $125,000 each with an interest rate of slightly over 5%. The other contract before the Commission which directly relates to DRA is the Nonexclusive Sublease Agreement which was previously approved with DRA and Roberts River Rides and was subsequently assigned to the purchaser of the non-gambling license holding the harbor and it allows mutual use of the boarding ramp.

Mr. Hirsch recommended approval of the Eighth Amendment to the Operating Agreement and the Nonexclusive Sublease Agreement for the Dubuque Diamond Jo. Chair May called for a motion regarding the Eighth Amendment to the Operating Agreement and the Nonexclusive Sublease Agreement under contract approvals for the Dubuque Diamond Jo. Commissioner Van Horn made the motion based on staff recommendation. Commissioner Whittenburg seconded the motion, and the motion passed unanimously. (See Order 94-41)

Mr. Hirsch next discussed the tax payment guarantee bond which was set at $60,000, which appeared to be in order; and also the contract with Windward International, Inc., which provides the marine insurance for the DDJ. Mr. Hirsch recommended approval of both of these items. Commissioner Van Horn made a motion to

approve the tax payment guarantee bond and the marine insurance contract. Commissioner Whittenburg seconded the motion, and the motion passed unanimously. (See Order 94-42)

Mr. Hirsch discussed the management contract between Greater Dubuque Riverboat Entertainment Company (GDREC) and its managing company, The Riverboat Management Company. This is a request to approve an extension of an agreement. Upon receipt of the request for the extension, Mr. Hirsch had requested clarification of ownership of the company and received a communication about it, but requested that the contract be deferred and asked that no money be transferred to this company until the ownership has been clarified which needs to be done by the next meeting. Chair May called for a motion to defer action on this contract until the next meeting with the caveat that no funds be transferred to this company. Commissioner Sealock so moved with Commissioner Whittenburg seconding the motion. The motion passed unanimously. (See Order 94-43)

Chair May called on Mr. Hirsch to discuss the six contracts for The President which need Commission approval. The President is executing contracts with A. Whitcomb & Associates, Aratex Services, Colonial Coach Lines, IGT, Paulson Dice & Card, and Rutland Simmons as they feel fees associated with these entities will exceed $50,000 during the calendar. Whitcomb & Associates deals with advertising and associated items. Aratex Services provides linen services. Colonial Coaches provides tour group opportunities. IGT and Paulson Dice & Card are gaming related equipment, and Rutland Simmons is also an advertising agency. Mr. Hirsch recommended approval of the contracts. Chair May entertained a motion regarding the approval of the contracts for The President. Commissioner Whittenburg made a motion with Commissioner Canella seconding the motion. The motion passed unanimously. (See 94-44)

Chair May called upon Mr. Hirsch to review the excursion schedules. The excursion schedules, for the most part, were submitted on the basis of the anticipated rule changes and indicate when they will be cruising and the hours of operation which is not restricted at this point in the law.

The President anticipates cruising Monday - Friday from 9:00 A.M. to 11:00 A.M. and also anticipates operating 24 hours Friday through Sunday. Their request also implies and requests modification of the request on commencement of the excursion season and starting it on May 23rd.

Commissioner Sealock asked if there was a need to be open 24 hours. Do they anticipate activity during the night? Mr. Hirsch indicated that he felt this was a type of a test procedure, and if the boats

find that it is not workable, they will request that the schedule be reduced. The non-profit organization has approved the excursion schedule.

The Mississippi Belle II is requesting to modify their summer schedule season to start on May 19, 1994, cruising Monday through Friday from 1:00 to 3:00 P.M. They anticipate increasing their hours by one hour on every day of the week, and will not be open 24 hours at this point in time. The non-profit organization for the Mississippi Belle II has approved the excursion schedule.

The Sioux City Sue expects to extend their hours of operation beginning on May 23, 1994, with plans to start cruising on May 30, 1994, from 10:00 A.M. to 12:00 Noon every day of the week. They will be staying open until 4:00 A.M. Sunday through Thursday, and 6:00 A.M. Friday and Saturday. This again is in anticipation of the new rules. If it is not profitable to operate, they will request permission to scale back their hours of operation. The cruise schedule has been approved by the Missouri River Historical Development.

The Dubuque Diamond Jo will start their excursion schedule on June 1, 1994, cruising Monday through Friday for 2 hours from 10:30 A.M. to 11:30 A.M. They are also asking for extended hours of operation, including 24 hours on the weekend. At the time of submission, the non-profit organization had not approved the schedule, but have met since then, and have approved the schedule.

Chair May asked if there were any additional questions regarding the excursion schedules. Mr. Hirsch recommended that the schedules for The President, the Mississippi Belle II, the Sioux City Sue, and the Dubuque Diamond Jo be approved as submitted. Commissioner Van Horn made a motion upon staff recommendation that the schedules be approved. Commissioner Canella seconded the motion, and the motion passed unanimously. (See Order 94-45)

The next item on the agenda were the meeting dates for fiscal year 1995. The John Schegan licensure hearing will be held on June 20, 1994, on Monday, immediately preceding the Commission meeting which has been rescheduled for Tuesday, June 21, 1994, due to conflicts in schedules. Further, the Commission has recently become aware of some purported or claimed options and claimed sale of options with regard to some of the shares in the Greater Dubuque River Entertainment Company. According to the rules, those options are subject to Commission approval, and the purported options will come before the Commission for approval next Thursday, May 26, 1994, at 9:00 A.M.

The meetings scheduled for fiscal year 1995, were discussed. Commissioner Sealock wondered if the August or March meetings would be held in Des Moines or Dubuque. Commissioner Canella indicated that he would like the August meeting to be held in Dubuque, and that he would like to see the Dubuque Diamond Jo. Mr. Ketterer inquired if it would possible to move the October meeting ahead one week to October 13, 1994. The above changes were made to the meeting dates; however, no motion was considered necessary as changes are occasionally made to the meeting dates.

The next item on the agenda was the referendum results. Chair May indicated that it had been an interesting week in the life of gaming in Iowa. She indicated that as a Commission they probably were not surprised by the results, except for the strength of the passage in Dubuque and Sioux City. The results put the staff of the Racing and Gaming Commission in a position of having a lot of work to do in a short period of time, but it will be done. Chair May commended the staff for the excellent job done in preparing to respond to the referendum results. A lot of the work already done is visible in the massive rule amendments.

Mr. Ketterer indicated that at times it was very difficult to respond to all of the inquiries which the Commission office receives from all of the different areas. He indicated that one of the questions was if a referendum was defeated, when could it be put on the ballot again. He indicated he felt the statute was silent with respect to that issue and that an Attorney General's opinion would have to be sought; however, when Commissioner Whittenburg arrived she had heard on the radio that an Attorney General's opinion had been issued which stated that an additional referendum could be held at any time. He is not aware of any plans to hold a second referendum in Black Hawk County at this time. Commissioner Canella stated that new referendums could possibly go on forever. Mr. Farrell indicated he did not think that was so as they next would have to held by petition, and then there would be a two year roll for any referendum done upon petition. The last election was a special referendum. The boats were required to have a referendum by the legislature; however, the tracks were by petition. Council Bluffs had not had an election before and were required to have a petition for this referendum.

Chair May asked for any additional comments in regard to the referendum results. Hearing none, she inquired if there were any other comments in general.

Mr. Ken Bonnet, President of the Mississippi Belle II, and one of the executive managers of the Catfish Bend Casino, updated the Commission on two issues. Open gaming had started in Clinton on

Monday, everything went smoothly. People are pleased with the ability to come and go as they wish.

As to Catfish Bend Riverboat Casino, the final closings have come as to the stock options. They will have solid numbers for us at the next meeting, but basically the full equity position will be at approximately $6.8 million which is about $300,000 higher than what they had originally anticipated. Dan Kehl will be the interim general manager, and they are still looking for a general manager. They have a casino manager and two shift managers hired, and they should be arriving soon. The licensing process will be started immediately on those people. They are interviewing for the controller's position currently. They are basically ready to put an offer in on a building. Their gaming school will start in July, and are still aiming for early September.

As there was no other business to be brought before the Commission, Chair May entertained a motion to adjourn. Commissioner Van Horn so moved, with Commissioner Sealock seconding the motion. The motion passed unanimously, and the meeting adjourned at 10:10 A.M.

MINUTES TAKEN BY JULIE HERRICK, CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
JUNE 20 AND 21, 1994

The Iowa Racing and Gaming Commission (IRGC) met on Monday morning, June 20, 1994, in the Grand Ballroom of the Hotel Savery in Des Moines, Iowa. Commissioners present were: Chair, Lorraine May; Vice-Chair, Richard Canella; and members Rita Sealock, Del Van Horn and Nancy Whittenburg.

Chair May called the meeting to order at 11:05 A.M., and entertained a motion to approve the agenda with the exception of Item No. 14, and adding the words "Hearing for Licensure". Commissioner Whittenburg moved to approve the agenda as stated with the amendment to Item 14 to read: "Hearing for Licensure - John Schegan". Commissioner Canella seconded the motion, which passed unanimously.

Chair May called for a motion to adjourn to Executive Session for the purpose of reviewing background information. Commissioner Canella moved to adjourn to Executive Session, with Commissioner Sealock seconding the motion. The motion passed unanimously. The Commission adjourned to Executive Session at 11:10 A.M.

The Commission reconvened in open session at 1:10 P.M.

Chair May called for a motion to approve the minutes from the Commission meeting of May 18 and 19, 1994. Commissioner Canella made a motion to approve the minutes, with Commissioner Van Horn seconding the motion. The motion passed unanimously.

Chair May called on Jack Ketterer, Administrator of the IRGC, to discuss the Credit Agreement submitted for approval by The President Riverboat Casinos, Inc. Mr. Bob Simms, on behalf of The President, submitted Amendment No. 1 to a previous Indenture dated September 23, 1993, for the approval of the Commission, which requires the President Riverboat Casino - the parent corporation - to maintain a forty million dollars in cash equivalents. Mr. Ketterer asked Mr. Simms to explain the "At Risk" portion of the Credit Agreement as it pertains to The Connelly Group. Mr. Simms explained that their risk will not change. Commissioner Canella moved to approve the credit agreement submitted by The President. Commissioner Whittenburg seconded the motion, and the motion passed unanimously. (See Order No. 94-46)

The next item on the agenda was a contract approval for Deloitte & Touche submitted by Prairie Meadows. Mr. Pete Scarnati, Racing

Secretary of Prairie Meadows, stated that Deloitte & Touche have been chosen as a consultant to help them through the process of getting slot machines in operation. The contract is set up in phases, so that if a management company is used, Deloitte & Touche would not be used for the later phases of the contract. Commissioner Sealock made a motion to approve the contract for Deloitte & Touche, with Commissioner Canella seconding the motion. The motion carried unanimously. (Order No. 94-47)

Chair May called on Terry Hirsch, Director of Riverboat Gambling, to explain the loan agreement between Gaming Development and Argosy Gaming Corp. Part of the letter of intent signed with Argosy Gaming had a conditional loan arrangement of $350,000.00. The conditions which would kick in the loan have been met and are as follows: 1) the execution of the Letter of Intent, 2) approval of the May 17th referendum vote, and 3) the approval of the transfer of the stock from the original stockholders of the Sioux City Riverboat to the Gaming Development. The money has changed hands. Mr. Hirsch felt it was appropriate for the Commission to have an opportunity to approve this portion of the Letter of Intent.

Mr. Bruce Crary, attorney for the Sioux City Riverboat and Gaming Development, indicated Sioux City would be in front of the Board next month with an application after it has been determined how the ownership will be held between Sioux City Riverboat and Argosy. It was noted that Argosy has not submitted to a background investigation at this time.

Chair May referred to page 3 of the contract which states that the second $350,000 is to be paid "Provided the State of Iowa does not issue an operator's license to operate a riverboat gaming casino in the State of Iowa on the Missouri River to another casino operator, which becomes operational prior to January 1, 1996." This has not occurred to date; however, Chair May stated she did not want approval of this financial arrangement to be an indication the Commission is overlooking that phrase or condoning the existence of the exclusivity on the river.

Chair May called for a motion to approve or disapprove the financial commitments portion of the Letter of Agreement with Argosy Gaming Corp. with the understanding that the Commission is only dealing with Section 1A of the letter dated April 25, 1994, which deals with funding arrangements and also that the State of Iowa has not readdressed the exclusivity issue. Commissioner Sealock so moved, with Commissioner Whittenburg seconding the motion. The motion passed unanimously. (Order No. 94-48)

Chair May called on Terry Hirsch to present the contracts for the Dubuque Diamond Jo. Mr. Hirsch indicated the first three contracts were submitted by Mr. Joe Zwack and are subsequent financial arrangements made since the last time the Commission was provided with the structure of the organization. The PDS Financial Corp

loan consolidates some outstanding loans relative to the boat and its departure from Louisiana, a secondary loan in excess of two million dollars, and some loans with equipment manufacturers. The Donald Iverson note is a new note in excess of $600,000, he formerly had a note in excess of $400,000. The investor notes were a temporary measure used by GDREC to pay off Fletcher Leasing so no default would occur on that arrangement and the amount owed to the investors now is significantly less.

PDS is two notes - one for $6.8 million for permanent financing of the boat at 11.5% interest over 5 years, and a $2.4 million note which is permanent financing for the machines at 10.75% interest for three years. PDS is a financial company out of suburban Minneapolis. All but approximately $350,000.00 of the investor notes are taken care of by way of the PDS notes. The note from Mr. Iverson is for operational purposes.

Mr. Joe Zwack, president of GDREC, indicated that PDS did approximately $150-200 million of financing for casinos in the central United States last year. PDS sells their notes to ITT (International Telephone and Telegraph) who is the ultimate holder of the notes. Commissioner Canella was concerned as to whether or not the note had actually been purchased by ITT.

Commissioner Canella made a motion to approve the contract with PDS Financial Corporation subject to documentation of the sale to ITT within the next week or more background on PDS prior to the next meeting. Commissioner Van Horn seconded the motion, and the motion passed unanimously. (Order No. 94-49)

Chair May called for a motion regarding the note from Donald Iverson and the investor notes. Commissioner Van Horn made a motion to approve the notes from Donald Iverson and the investors, with Commissioner Canella seconding the motion. The motion was unanimously approved. (Order No. 94-50)

The next item of discussion was the Riverboat Management Company Agreement for the Dubuque Diamond Jo which was deferred from the May meeting. Mr. Gross stated that the contract presented at the May meeting was an extension of a contract dated December 15, 1992, and that no action was taken by the Commission at the May meeting. Since that time, an Interim Management Agreement has been reached with the Dubuque Racing Association (DRA) for the next 6 months, and a Termination Agreement with The Riverboat Management Co. Mr. Gross, on behalf of the company, withdrew the request for an approval of the contract for The Riverboat Management Company Agreement, and asked the Commission to consider the Termination Agreement and the Interim Management Agreement with DRA.

Chair May indicated that she would prefer to reverse that as the Riverboat Management Company contract is dated December, 1992, and should have been before the Commission prior to this for approval

or disapproval. The concerns at the last meeting were that there were questions as to the ownership of that particular management company, who the claimed owners were, and what the relationships were with regard to the management company. Mr. Jeff Farrell indicated there was a letter stating that Mr. William Alfredo and Mr. Joe Zwack would each have a half interest, however, if Mr. John Schegan were to be licensed, he would have a third interest in Riverboat Management Company. Chair May indicated her concern was that the Commission was dealing with a management agreement contract in which the ownership is not clear and there is a dispute as to ownership.

Mr. Hirsch stated that United Gaming has filed a lawsuit as of May 17, 1994 in which they allege to have purchased the Alfredo's and Schegan's ownership in GDREC. Chair May asked Mr. Zwack who owned The Riverboat Management Company. Mr. Zwack explained that currently there are no assets in the company. He further explained that Mr. Alfredo never became active in the business as he was not licensed, that he was the only active individual in the company. Mr. Alfredo originally signed on the limited liability documents and his name was never removed.

Commissioner May indicated that she felt the Commission needed to make a determination on the management contract so that if, in the future, the Court determines the contract is applicable for a period of time or that something should have been approved by the membership that was not, it would put the Commission in a situation where they have lost control over the management arrangement itself.

Upon questioning from Commissioner Whittenburg, Mr. Zwack indicated that the limited liability company is in existence at the present time. He also indicated that GDREC would not like to see a retroactive decision on the management contract which could possibly affect the documents executed during the past year which he signed as a managing member. Chair May stated she thought Mr. Zwack had been signing as a managing member of Greater Dubuque Riverboat Entertainment Company (GDREC) as opposed to a member of The Riverboat Management Company. Mr. Zwack stated that The Riverboat Management Company was the operator of GDREC during the first year under the Operating Agreement.

Commissioner Sealock made a motion to disapprove the contract with The Riverboat Management Company, with Commissioner Canella seconding the motion. The motion to disapprove the contract passed unanimously. (Order No. 94-51)

Mr. Doug Gross discussed the Interim Management Agreement between GDREC and DRA, which has been approved by the DRA. Upon approval by the Commission of the Interim Management Agreement, it would go into effect immediately, therefore, removing Mr. Zwack, Mr. Alfredo and Mr. Schegan from any management position or interest with

regard to the operation of GDREC. In response to a question from Mr. Ketterer regarding notice of the meeting, Mr. Gross stated that United Gaming had filed a request with the Federal Court in Cedar Rapids for a temporary restraining order to prevent the unit holders of GDREC from holding a meeting on June 12th where they wished to take action with regard to the management agreement issue. The request was denied, and the meeting was held as scheduled. To be sure that all meeting notice requirements were met, another meeting was held on June 19, 1994, and the majority of unit holders present ratified the interim management agreement. United Gaming of Iowa claims to hold a half share interest; however the Operating Agreement states that in order to become a member of GDREC there must be approval from the majority of the remaining members and no such action has been taken in regard to the alleged transfers. Further, they attempted to have proxies for the voting of those shares which they allegedly hold, however, no such provision is provided for in the limited liability company or the operating agreement so the proxies were not recognized. The termination agreement and interim management agreement votes were passed unanimously, and all other votes passed were in excess of 90% in favor. Chair May asked if there was any public comment in regard to the Interim Management Agreement and Termination Agreement. Mr. Ketterer stated that staff would recommend approval of the agreements. Mr. Robert Van Vooren, attorney for United Gaming, stated that they approved of the appointment of DRA as the interim manager; however, they do have some concern with the advisory committee which they feel has some governing functions which are significant and, therefore, creates a problem. They feel the advisory committee has veto control over what DRA does. Mr. Gross indicated that the purpose of the advisory committee is simply to be a communications facilitator between the membership and the people that are responsible and carry out the wishes of the unit holders. Action on the Interim Management Agreement was deferred until later in the meeting.

The next item on the agenda is the Termination Agreement which terminates the management contract between GDREC and The Riverboat Management Company which had the contract to manage the boat and managed the limited liability company, GDREC. Action on the Termination Agreement was also delayed until later in the meeting.

Chair May called on Mr. Hirsch to discuss the contracts submitted by the Mississippi Belle II in preparation for the new boat. The first three contracts, Mosler, Money Processing Consultants, Inc. and Cummins Allison, all relate to money handling equipment which is being purchased. The contract with West Virginia Belle, Inc. is for the purchase of some boat equipment-possibly a compute and some barges which are going to be put in place. Lodging Systems is an extension of an existing contract expanding capabilities in the gaming area for accounting purposes. Mr. Hirsch recommended approval of all of the contracts.

Commissioner Sealock commended The President for using Iowa-based companies. Commissioner Sealock made a motion to approve the contracts submitted by the Mississippi Belle II. Commissioner Whittenburg seconded the motion, which was then passed unanimously. (Order No. 94-52)

Chair May called on Mr. Hirsch to discuss the contracts submitted by the Catfish Bend Riverboat Casinos. The contract with Mississippi Belle II is for consulting services and also the sharing of some data processing activities which Catfish Bend will be contracting from the Mississippi Belle II. The contract with the Iowa Council of Campfire is for the purchase of a building in downtown Ft. Madison for the corporate headquarters. Mr. Hirsch recommended approval of the contracts.

Commissioner Canella asked if the $50,000 would include renovation costs. Mr. Ken Bonnet, managing advisory board member for Catfish Bend Casinos, indicated that the building renovation will not exceed $50,000.00. The contract is strictly to cover the purchase of the building.

Commissioner Van Horn made a motion to approve the contracts submitted by Catfish Bend Casinos, with Commissioner Canella seconding the motion. The motion passed unanimously. (Order No. 94-53)

The next item on the agenda is a management agreement between Iowa West and AIM Management regarding Bluffs Run. Mr. Dennis Reed, president of the Iowa West Racing Association, requested that the Commission approve the contract. Mr. Barry Sevedge of AIM was also present. Chair May asked what type of casino management experience AIM possessed. Mr. Sevedge indicated that an advisory committee has been established which is discussing hiring a casino consulting firm to get the project started, which would include design, market studies, and building renovations. They anticipate the consulting firm will help them hire the key employees for the operation - a slot manager, equipment manager and area and floor people. Various consultants have been interviewed, and they hope to be able to bring a consultant's contract back to the Commission by the next meeting. Chair May again asked if AIM had any management experience with slot machines or casinos. Mr. Sevedge indicated they did not. Iowa West and AIM felt that it would be better for the track in the long run to hire a consultant to help establish the casino rather than bringing in a third equity interest. They anticipate the consultant's contract would be for six months to a year, and the expenses would be shared by AIM and Iowa West. Mr. Jim Campbell explained some of the thought process in putting together the management agreement and division of profits. Iowa West will carry forward a debt of one million dollars owed to AIM, however, AIM is forgiving approximately $4.6 million in past due management fees. There was a lengthy discussion as to how the

track was originally financed, how much is owed to AIM, and current track debt.

Chair May asked Jack Ketterer for a recommendation on the contract. Mr. Ketterer indicated that he felt it was necessary for the Commission to unanimously feel comfortable with this contract, and if they did not, then action should be deferred. Iowa West's original goal was to have ownership of the track, and that goal can now be realized in a relatively short period of time. He feels that it is important that the there is someone to represent the community. Chair May asked if there was any additional public comment.

The Commission took a short break and reconvened at 3:15 P.M.

Chair May called on Linda K. Vanderloo, Director of Racing/Administration for the IRGC, to address the Greyhound Promotion Fund. This fund is to be used by a non-profit organization for research, education, marketing of dog racing in the state, including public relations and other promotional techniques, excluding political activity or influencing legislation. The Iowa Greyhound Association is the only non-profit organization applying for the funds this year. They have provided an accounting of how the funds have been spent for the last four fiscal years. Linda K. Vanderloo indicated that the staff did approve of the request. Commissioner Van Horn made a motion to approve the distribution of the Greyhound Promotion Fund, with Commissioner Whittenburg seconding the motion. The motion passed unanimously. (Order No. 94-54)

At this time, the Commission returned to the Interim Management and Termination Agreement regarding the Dubuque Diamond Jo, Items D(5) and (6) under Item No. 4. Chair May called on Jeff Farrell, Asst. Attorney General for the Commission, for input on the contracts. Mr. Farrell indicated the Interim Management Agreement has a provision which states that if the committee feels an action is contrary to the best interests of the company, the committee could terminate the agreement. The committee does not have any management duties. The committee could have some input regarding the sale or lease of the Dubuque Diamond Jo, entering into contracts which go beyond the term of this contract. The Interim Manager will be handling the day-to-day operation of the boat. All members of the advisory committee are passive investors and have been investigated in some way.

Mr. Ketterer indicated that he would like to see background investigations performed. The practice of the Commission, on ownership issues, is to complete the backgrounds prior to approving ownership. Management companies or individuals have been allowed to begin their duties and be licensed subject to the backgrounds being completed. He does not want to lose the ability to go in and perform background investigations on these people, but feels the

approval could be given subject to the completion of background investigations.

Chair May asked Mr. Doug Gross, attorney for GDREC, if there was any reason why the background investigations could not be started on those advisory committee members to raise the comfort level of the Commissioners by the next commission meeting. Mr. Gross did not have a problem with that proposal as long as the Interim Management Agreement was approved, allowing the interim General Manager to be put in place.

Chair May called for a motion to approve the Interim Management Agreement subject to the completion of background investigations of a level to be determined by staff by the next commission meeting, and approval of the Termination Agreement as set forth in Subparagraph 1. Commissioner Sealock made a motion to approve the Interim Management Agreement and Termination Agreement, with Commissioner Whittenburg seconding the motion. The motion passed unanimously. (Order No. 94-55)

Chair May returned to the issue of the management contract between Iowa West Racing Association and AIM. Chair May called for a motion for the approval or disapproval of the Iowa West/AIM Management contract. Commissioner Canella made a motion to approve the management contract, with Commissioner Van Horn seconding the motion. The motion passed unanimously. (Order No. 94-56)

The next item on the agenda is a Petition for Rulemaking by the Racing Association of Central Iowa which is requesting the Commission to adopt a rule authorizing video poker, video blackjack and other similar video games of chance. Mr. Tom Flynn, attorney for the Racing Association of Central Iowa, filed the request asking the Commission to interpret what a video game or slot machine is in the State of Iowa so that Prairie Meadows and the other racetracks can govern themselves accordingly. They feel it is in the Commission's province to define the rule, and do not feel the Legislature has given a clear road map as to what a video game or slot machine is. House File 2179 which amended Section 99F.1, subsection 10, reads:

> "Gambling game" means any game of chance authorized by the commission. <u>However, for racetrack enclosures, "gambling game" does not include table games of chance or video machines."</u>

Mr. Flynn indicated that the House Journal showed no discussion as to what the term "video game" meant. There was some discrepancy among the legislators as to what the term "video game" was referring to. The terms "slot machines" and "video games" were not defined by the legislature.

Mr. Dennis Renaud, State Representative from Altoona, made a few comments regarding HF 2179 passed during the last days of the legislature. There was a gambling bill defeated two years ago, and one of the main reasons was opposition to "video lottery". All of the talks centering on the legislation dealt with "slots". When he visited a riverboat, he was thinking slots, because they were available on the boat. The tracks would be able to have the same machines as the boats have in their slot areas. He was also a proponent of table games. He felt that if slots were in the bill it would give people the opportunity to play blackjack or poker, if not at a table game, then at a video slot machine. He indicated that if there is a different definition other than what he has stated today, then the amendment would have been reconsidered at the time of debate. He, and several other legislators, thought the bill would give the tracks the ability to have the same types of machines currently on the riverboats, no more or less than that.

Mr. Jim Campbell, representing Iowa West Racing Association, indicated that Iowa West supports the Racing Association of Central Iowa in its petition for rulemaking and have filed a petition asking to join the Racing Association of Central Iowa in its petition for rulemaking. Iowa West feels the Commission has that authority and agrees with the situation.

Mr. Duane From, a representative of Video Lottery Technologies which is affiliated with United Tote which operates pari-mutuel wagering systems in the state, indicated that from the industry standpoint there is no significant difference between slot machines and video gaming machines. The only difference is how the end result of the game is displayed - a slot machine is displayed on electric mechanical reels and a video game is displayed on a CRT. There are some reel games which are presented on video machines. Commissioner Canella indicated that his understanding of a video machine is that the person playing the game had to make a decision - draw a card or not in poker - where that is not required in a slot machine. Commissioner Canella asked the difference between a video lottery machine and a video poker machine. Mr. From indicated that video lottery is typically a program which is a wager for a low price, is available statewide in age-controlled establishments, and with a limited number of machines.

Mr. LaVern Schroeder, who represented Bluffs Run on Capitol Hill, stated that it was the understanding of those working on the bill that they asked for only those types of machines which were present and currently operating in the boat industry in Iowa. If the machine spit out coins, it was considered a slot machine; if it didn't kick out tokens or coins, it was considered a video machine. He feels that is what was envisioned by most of the legislators.

Chair May indicated that after reviewing the bill, she did not think the term "slot machine" was in the bill. Mr. Schroeder indicated that the term "slot machine" is found in the existing

Code, and that the view of the legislators and representatives was that the only type of machines being discussed were those which spit out tokens or coins and are currently found on the riverboats operating in Iowa.

Chair May quoted the statute:

> "Upon application, this Commission shall license the licensee of a dog or horse pari-mutuel racetrack to operate gambling games at a pari-mutuel racetrack enclosure subject ..."

Gambling games is defined as meaning

> "Any game of chance authorized by the commission. However, for racetrack enclosures, gambling games does not include table games of chance or video machines, or sports betting."

Chair May pointed out that there is no reference to slot machines.

Commissioner Canella asked, if in the event the Commission ruled that the tracks could have video games, if that included video lottery. Mr. Schroeder reiterated his opinion that if the machine does not pay out in a token or coin, that it was not a legal machine. Commissioner Canella asked if the Commission said that "video games" could be used at the tracks if that could be interpreted as video lottery. Mr. Schroeder indicated that it could. He feels that is the same approach held by all persons representing the tracks on Capitol Hill. Chair May asked why the term "lottery" was not included when it states "video machines". Mr. Schroeder did not know.

Carlos Jayne, lobbyist for the Iowa United Methodist Church, spoke on the Church's opposition to legalized gambling, particularly the government's involvement in so many different aspects of gambling. Video gambling games are considered to be the "crack cocaine" of gambling. He does not recall any distinction being made between video lottery machines and video machines. He does not feel there was any misunderstanding about the types of machines under discussion. He stated that he agrees with Representative Bob Rafferty's assertion of the matter as stated in his correspondence to the Commission.

Chair May asked Mr. Jayne about his statements on the addiction rate. She wondered if he was talking about video blackjack and poker having a higher addiction rate than slot machines. He indicated that they do. She also asked if there was any difference between video slot machines and reel slot machines. Mr. Jayne stated that any type of video machine is more addictive than a reel-type machine. The movement on the video machines is what makes them so addictive.

Mr. Ketterer stated that the legislature has put the Commission in a no-win situation on this issue. He does not recall, through all of the events from the Gaming Study Committee through bills that were introduced or in any discussion, any distinction made between video slot machines and reel-type slot machines, but the language says "video machines". It also raises the issue of table games of chance. Missouri disallowed games of chance, but allowed games of skill. Iowa's bill says that table games of chance are not allowed. Does that imply that table games of skill are allowed - such as blackjack and poker? Mr. Ketterer does not feel that table games of chance or skill were ever contemplated during the process.

He feels that the Commission will be asked by one of the riverboats to approve Keno within the next six months. If the Commission approves Keno then a riverboat, then what if a track requests the same? Keno does not fall in the areas of video machine, table games of chance or sports betting, so therefore, is it supposed to be approved for the tracks? He stated that Mr. Flynn's report makes several references to the definition of a slot machine, however, the Commission is looking for the definition of a video machine.

He also pointed out that Mr. Jayne indicated that we did not want the increased availability of the video machines, but Dubuque and Council Bluffs will have them where riverboats are or are contemplated for the area. Black Hawk County rejected it, so the only place to have increased availability would be Prairie Meadows in Polk County. He feels that video machines are more addictive in areas where video lottery is approved due to the availability of the machines. He feels that the Commission will have half of the people angry with them regardless of what they do on this issue since the vote was so close. He would recommend that the Commission request clarification by the Legislature.

Chair May asked what the Commission would do between now and when the legislature acts. Mr. Ketterer felt that the Commission could take a strict interpretation of the language which would make it difficult to allow video machines, but table games of skill or keno could be allowed. If they follow what they feel the legislative intent was, then the Commission would allow the video machines, but tables games or keno would not be allowed.

Chair May asked Jeff Farrell for his comments. He recommended that the Commission concentrate on the language actually in the statute. They will have to interpret whether the term "video machines" includes video poker and video blackjack. If so, those types of games can not be allowed at racetrack enclosures. Chair May asked if the Commission had the discretion to interpret video games to exclude video poker and blackjack. Mr. Farrell indicated that he would need to research that issue.

Commissioner Sealock made a motion to defer until Mr. Farrell had an opportunity to research the situation as the Commission would want to follow the rules. Commissioner Canella state that the rules were quite clear - no video games. Commissioner Van Horn stated that he would like to have video games. Commissioner Canella indicated he wanted to vote on the issue. Commissioner Whittenburg indicated that the legislature often leaves ambiguous language, whether from an inability to draft specifically or preparing to look into the future, and that it is up to the Commission to put some definition into the language since the legislature did not have the foresight to do so. She state that she was not comfortable in making a determination at this time without further input from Mr. Farrell. Commissioner Van Horn called for the question.

Chair May called for a motion which directed the IRGC staff to draft a rule which would define video machines to include video blackjack and video poker, but would exclude them from racetrack enclosures. Terry Hirsch asked if the Commission wanted to be that narrow as there are video representations of reel devices and video keno. Chair May felt the motion gave the staff a clear direction as to the thought processes expressed at the meeting, which would allow the staff to come back with a rule covering all the various options. Commissioner Sealock seconded the motion. Chair May called for a roll call vote: Commissioner Whittenburg - Aye; Chair May - Aye; Commissioner Canella - Aye; Commissioner Sealock - Aye; Commissioner Van Horn - Aye. The motion passed unanimously. (Order No. 94-57)

The Commission took a short break and reconvened at 4:38 P.M.

Chair May called on Jack Ketterer to discuss the admission fees before the Commission. There are two schedules before the Commission - one for three boats (The President, Mississippi Belle II and the Sioux City Sue). The other includes four boats which includes the Dubuque Diamond Jo currently subject to a show cause hearing on licensure. The schedules give the break down of the admission fees on a weekly basis. The payments would begin on July 7, 1994. Depending upon the number of boats that are licensed, other than what is shown in the two versions, the fees would be subject to change. Mr. Ketterer asked that the Commission approve these schedules based on whatever is the correct number of licensees. Commissioner Van Horn made a motion to approve the admission fees, with Commissioner Canella seconding the motion. The motion passed unanimously. (Order No. 94-58)

Chair May called on Terry Hirsch to discuss the request by the Catfish Bend Riverboat Casino to acquire the outstanding tokens from the Mississippi Belle II and Mississippi Belle II's request to acquire the outstanding tokens from the Dubuque Casino Belle. Mr. Hirsch indicated that he had already denied the requests due to the confusion which would arise from someone attempting to redeem

tokens. Mr Hirsch indicated that Sioux City had been given the opportunity to purchase the tokens from the Emerald Lady which are currently being used. He has verbally told Argosy and Gaming Development that when the replacement boat arrives that those tokens would have to be retired. Letters from the attorney for Catfish Bend and Mississippi Belle II have been received asking for a ruling in their favor. Mr. Ketterer asked Mr. Hirsch what the position of the Nevada Gaming Enforcement Board was on this matter. Mr. Hirsch stated when a licensee changes its name or location in Nevada, it must retire that issue. The only time issue can be bought or sold between corporations in Nevada is when the name and location of the casino remains the same.

Mr. Ken Bonnet of the Mississippi Belle II indicated he did not understand why Nevada law would apply now when it did not apply a year ago. They are asking that the Commission be consistent with their past policy.

Commissioner Whittenburg stated that if the Commission felt past decisions were in error, they did not need to continue the practice. The Commission needs to protect the public from future confusion in cashing in tokens.

Commissioner Whittenburg made a motion to deny the request by Catfish Bend Riverboat Casino to acquire all of the tokens from the Mississippi Belle II, with Commission Sealock seconding the motion. The motion passed unanimously. (Order No. 94-59)

Commissioner Whittenburg made a motion to deny the request by Mississippi Belle II to acquire all of the tokens from the Dubuque Casino Belle, with Commissioner Sealock seconding the motion. The motion passed unanimously. (Order No. 94-60)

Chair May brought up the next item on the agenda which is a hearing on Iowa West Racing Association's non-payment of a portion of the 1993 pari-mutuel tax. She indicated a request for a continuance has been filed, and if there is no objection from the other commissioners, the matter will be deferred until the next meeting. It was agreed to defer this item until the next meeting.

The next item on the agenda is Administrative Business. Chair May called on Mr. Ketterer to discuss the first topic which is the approval of an application process for licensees to conduct gambling games at licensed racetrack enclosures. The racetracks have indicated that they anticipate beginning operations in the latter part of the year. Renewal of racing licenses and requests for racing dates will be discussed at the next meeting, and subsequent to that, on August 1st, he would like to begin accepting applications for licenses for gambling games. Some of the requirements in the Code for gambling games have to do with the number of racing dates that the licensees run, and agreements with horsemen or dog groups. He feels it will take the tracks at least

that long to get their applications in the proper form to submit to the Commission. A draft of an application is submitted for review, and it is requested that the Commissioners contact the staff if there are additional requirements that they would like to request of the racetrack applicants. The tracks have been given some indication of the types of information required. Chair May feels the application needs to show who the owners are. Chair May asked if there was a motion for approval of the draft for the application process. Commissioner Canella so moved with Commissioner Whittenburg seconding the motion. The motion passed unanimously. (Order No. 94-61).

Mr. Ketterer then discussed agenda item 10(b) which is the application process for persons seeking a riverboat license in the Council Bluffs area. There are approximately a half dozen entities which are interested in pursuing a license for that area. Mr. Ketterer requested that the staff have the opportunity to identify CPA firms, investment banking firms, and market research firms to assist them in reviewing the applications as there will be many technical questions as to the financing of some of those operations, and the number of boats that the market can support. The final agreements or contracts with those persons would be brought before the Commission for approval. Secondly, he would like to make it clear that all applications for a license in the Council Bluffs area will be handled as a group. He does not want anyone to get the impression that if their application is filed prior to anyone else that they will have a better opportunity of getting the license. He has discussed this with several of the interested groups to determine a date for the submission of those applications.

Mr. Dick Wade, City Attorney for Council Bluffs, Iowa, requested that the Commission set a deadline of mid-September.

Mr. Ketterer explained that it could be 6-10 weeks, depending on the issues, from the time the applications are submitted to have the resources to do all of the background investigations on all parties concerned. The date he is referring to is the date that all applications have to be on file with the Commission and then the process would start.

Mr. Bill Wimmer, with The President Riverboat Casino, suggested that the Commission look at when they would like things to be "operational", and then back into the date. The Commission may need to consider when some of the applicants can be functional. He requested a more accelerated time frame.

Mr. Sam Curley, representing Par-A-Dice Corporation, stated that his concern with the deadline for applications in the Council Bluffs area is the extent to which the application would need to be completed. If the application is to have all the approvals from the Corp of Engineers, Coast Guard, city zoning done, and building

permits done, then he feels September is a very optimistic date. If the Commission is willing to accept applications based on applying for those permits, then he feels September would be fine.

Mr. Morris Shanley, representing the Omaha tribe, indicated his agreement with earlier statements. Since this involves an investment of $30-40 million, it would not be prudent for them to come forward and promise things that may or may not materialize.

Mr. Ketterer concluded from the statements made, the process is approved. He will keep the Commission informed about developments and the decision on any date can be deferred.

Chair May stated that the motion should cover three areas: 1) to adopt a procedure by which the Commission would set a deadline for submission of the application so that 2) all applications would be considered at the same time in order to make an informed decision and 3) to retain the necessary support to review the applications. Commissioner Canella so moved, with Commissioner Sealock seconding the motion. The motion passed unanimously. (Order No. 94-62)

Chair May brought forward the next item on the agenda which is the licensure of William Alfredo. Mr. John Sandre indicated that he would like the record to show that his presence is not an appearance on behalf of Mr. Alfredo for purposes of the agenda item. Mr. Sandre indicated that there are very serious doubts and concerns about the Commission's authority or jurisdiction to make the issue of Mr. Alfredo's licensure an agenda item. He requested an acknowledgement from Chair May that his presence was limited to attempting to inform the Commission and answer any questions the Commission might have with respect to that position as opposed to a consent of jurisdiction by the Commission in this matter. Acknowledgement was granted.

Mr. Sandre stated it was his understanding that the agenda item concerning Mr. Alfredo concerns only issues of licensure at this time and does not relate to any purported interest Mr. Alfredo has in the licensed entity. Chair May indicated that this particular agenda item arises because of the determination the Commission made at the last Commission meeting that all options Mr. Alfredo purports to hold are subject to, and will not be approved unless and until such time he establishes an entitlement to licensure; therefore, if he is unwilling to submit to licensure, she was not willing to represent that that would not affect the Commission's position with regard to the options. Mr. Sandre did not agree that the above was a Commission decision or resolution from the May 26, 1994, Commission meeting.

Mr. Sandre again stated he was present only to explain the position he is taking in this matter. It is their position that Mr. Alfredo's interests, as well as Mr. Schegan's, were confirmed and determined by the Commission by the licensure of GDREC in April or

May of 1993. That pursuant to Code Section 99F.7(7)(e), the Commission, in licensing GDREC, approved by definition, the option interests of Mr. Alfredo. Mr. Sandre stated he believes the interests acquired by Mr. Alfredo by virtue of contracts, agreements, and work performed, are interests and property rights that the Commission can not confiscate, and are not dependant upon the licensure of Mr. Alfredo, or the determination of his suitability. He feels that if he were to submit his client to a licensure hearing, he would be waiving that position on behalf of Mr. Alfredo in any subsequent court proceeding, and he is not willing to jeopardize that position.

Chair May stated that she was not aware the Commission had requested a waiver of that position. She stated that it is not uncommon to challenge the jurisdiction of an entity and proceed on the merits and retain the argument. Mr. Sandre indicated it would be a position inconsistent with his position to have Mr. Alfredo submit to suitability and licensure determination as he does not feel it depends on that, and secondly, is the ownership interest with respect to the Commission's ability to have Mr. Alfredo present and consider issues of licensure and suitability when he has not made an application to the Commission. Mr. Sandre stated he has a great deal of difficulty with the perceived authority and jurisdiction of the Commission to do that. The Commission's argument is that Mr. Alfredo is perceived to be claiming an interest in excess of 5% which would require the Commission to determine his suitability. Mr. Sandre pointed out that every rule in the Administrative Code that is promulgated by the Commission and deals with the licensing process speaks in terms of application to the Commission that includes a formal application and background investigation, and he does not feel this Commission has any authority to determine the suitability or licensure of an individual until those items are done. Mr. Sandre's real difficulty in submitting Mr. Alfredo to this forum at this time under these circumstances lies in the fact that he believes the agenda item as it relates to Mr. Alfredo is so that the Commission can determine his unsuitability, not his suitability or unsuitability. Mr. Sandre stated that he did not believe the Commission could determine whether or not Mr. Alfredo was suitable as he has not made an application or provided background information as is required by statute.

Commissioner Whittenburg asked how a person was to come before the Commission if they were not willing to come in to submit for licensure. Mr. Sandre stated that what is owned is a matter of contract rights and obligations between private litigants. His understanding is that this Commission can determine whether or not an individual is suitable to own an interest in the licensed entity. Mr. Sandre asked Chair May if the Commission's authority in this regard was limited to a determination as to whether or not Mr. Alfredo or anyone else is a suitable person to hold 5% or more of a licensed entity. Mr. Sandre stated that it was his opinion

that the Commission can not affect the contract rights and ownership rights as they exist between private individuals. Mr. Sandre asked Chair May to agree that the Commission has no authority to determine the property rights whether it be contract or other rights and obligations that exist between private individuals.

Chair May stated that the Commission can determine whether or not an individual can hold an interest in a licensed entity, and there may be lawsuits which would determine rights and obligations between individuals, the jurisdiction of which would lie with the district courts in the State of Iowa or the federal courts; however, the Commission can determine and control whether or not that individual ever gets an interest in a licensee.

For example, if this case would go to court, and at some point an unlicensed individual or an individual who this Commission has determined to be unsuitable, was found to have obtained an interest of 20% in a licensed entity, at that point, the Commission can, even prospectively, determine that the license is immediately revoked. In essence, no individual can obtain an ownership interest in a licensed entity without the approval of this Commission. The individual may well have legal rights with regard to recovery of funds in one regard or another in an unlicensed entity, but that does not mean that the license would continue.

Chair May also indicated that she disagreed with Mr. Sandre with regard to jurisdiction issues. She indicated this issue came up during March, 1993, at which time Mr. Alfredo and Mr. Schegan had an arguable claim to ownership rights in an unlicensed corporation which had no assets. This Commission did not deprive, arguably under Mr. Sandre's argument, Mr. Schegan or Mr. Alfredo of their interest in the unlicensed entity; however, the Commission, by virtue of the application process, can deprive Mr. Schegan and Mr. Alfredo and Mr. Zwack and anybody else, any interest in any licensed entity in the application process. In March, 1993, it was determined, and Mr. Schegan and Mr. Alfredo were informed, that no license would be granted with those purported ownership interests as the Commission was told they existed at the time; and that if they were ever to obtain any ownership interest or any rights with regard to the licensed entity, they would have to come before the Commission for licensure. The outcome was that there was a license or, alternatively, there were no ownership interests or shares in GDREC held by Mr. Alfredo and Mr. Schegan, or Mr. Alfredo and Mr. Schegan had to resubmit for licensure. That is the basis on which the license was granted, and that is the basis upon which Mr. Alfredo and Mr. Schegan agreed to back out, so that licensure could proceed.

Chair May also stated, with regard to the argument that the contracts and options were approved by the Commission, there was no way for Mr. Alfredo to contend the June, 1993 award of 10

additional shares was known to the Commission or any staff member. Also, the April 22nd agreement dealing with 22 shares to Mr. Alfredo and 5 shares to Mr. Schegan was never noticed on the agenda as a contract for approval. In February, 1994, Mr. Schegan and Mr. Alfredo were told they could stay involved and apply for a license or they could no longer be employed or even associate with this particular entity. This same letter also stated the Commission had not approved those contracts and no options would be recognized unless they were approved by the Commission. Instead of coming before the Commission for approval, those options, to the extent that they are cognizable, were purportedly transferred to someone else. After informing Mr. Sandre of several new facts which had come to the Commission's attention, Chair May informed Mr. Sandre that Mr. Alfredo and Mr. Schegan could either: a) claim no ownership interest, including options, or b) get the contracts, options, etc. to the Commission for approval, which would require by Commission ruling, licensure. The Commission is only requesting that these gentlemen do what was set forth in May, 1993.

Mr. Sandre reiterated his belief that Mr. Alfredo was an agenda item to be found unsuitable rather than suitable. Mr. Sandre indicated he did not agree with the manner in which some of the activities of his client were portrayed. He feels it is difficult to have this matter before the Commission as it appears the attitude of the Commission, and those persons associated with the Commission, is that Mr. Alfredo and Mr. Schegan have done something nefarious, are interlopers who are attempting to acquire an interest that they never contracted for or never earned, and he resents the implication. Mr. Sandre stated it was his understanding the April 22nd transfer of options was prepared and submitted at the same time as the license amendment. He finds it difficult to believe the Commission required the interests to be transferred and then failed to see the documents transferring the options. Mr. Sandre feels that if the Commission wants to take the position that the Commission did not, by licensing GDREC, approve the option agreements, then the Commission also needs to look at Rule 21.4(1)(m) which is entitled "Commission Approval of sale" which states:

> "In the event any ownership interest, whether majority or less, of any corporation or partnership holding a license for excursion boat gambling from the Commission is to be conveyed, no sale or conveyance shall take effect until approval is obtained from the Iowa Racing and Gaming Commission.",

so if it is the Commission's position in granting the GDREC license the Commission did not, as a matter of law, approve the options because they were not before the Commission for approval, then no sale or conveyance shall take effect or be recognized which would mean that Mr. Schegan and Mr. Alfredo owned what they transferred before they transferred those rights on April 22, 1993. Mr. Sandre

feels that if a sale took place, it had to be approved by the Commission, and the transactions have already been approved, which would mean that Mr. Schegan and Mr. Alfredo do not need to be licensed; however, if they were not approved by the Commission, by the Commission's own rule, the sale is ineffective and everyone would go back to the same interest they had prior to the transfer. Chair May stated that Mr. Sandre's argument would affect the 22% and 5%, and would not affect the initial 10%. Mr. Sandre's argument, with respect to the interest acquired through the April 22nd agreements, is that they were given to the Commission, and if his judgement were part of the application process, does not apply to the June 3rd agreement. He believes those are rights which Mr. Alfredo has obtained via a contract with Mr. Zwack.

Chair May informed Mr. Sandre that her difference of opinion with him is not with the licensure and suitability of Mr. Alfredo and Mr. Schegan. Her difference of opinion pertains to the necessity of the Commission addressing those issues, the necessity of the Commission making that determination and jurisdiction of the Commission to make that determination. Chair May stated that under the rules and procedures, it is the obligation of the applicant to establish entitlement to license. Chair May quoted statute which states that a license shall not be granted if the applicant is a corporation and 10% of the stock of the corporation is subject to a contract or option to purchase at any time during the time which the license is to be issued unless the contract or option is disclosed to the Commission and the Commission approves the sale or transfer during the period of license. The statute further states the ability to approve or disapprove contracts or options continues after the licensing process. Subsection 15 says that upon a violation of the conditions listed in this section, the Commission shall act immediately to revoke the license. Therefore, it is necessary for the Commission to approve or disapprove the transfer.

Mr. Sandre stated that that is the section under which he believes the Commission has already approved the transactions, and therefore, the rights and obligations arising from that transaction when GDREC was granted a license in April of 1993.

Chair May asked Mr. Sandre if he was contending the 10% interest Mr. Alfredo purports to hold from Mr. Zwack from June of 1993, or the 7% interest that Mr. Alfredo purports to have were approved by the Commission. Mr. Sandre said he was not contending that.

Mr. Sandre stated he had tried to make the record on behalf of his client the best he could and respects the Commission's views. He stated that he disagreed with whatever the Commission was going to do or felt it must do, but respects the Commission's right to make a decision as he would expect the Commission to respect his rights.

Chair May asked Mr. Sandre if it was his position that Mr. Alfredo would not speak with the Commission or address licensure issues so

the Commission could make any determination of suitability in order to approve the options. Mr. Sandre stated that it was his position that Mr. Alfredo will not submit to a licensure proceeding before the Commission as an agenda item when he has not made application to the Commission, and has not requested, either formally or informally, licensure. Mr. Sandre indicated that he did not agree with Chair May's statement as to how that decision affected the Commission's ability to approve or disapprove transactions.

Chair May then asked Mr. Sandre that if it were determined, as she believes the Commission has done, that approval of the options requires the finding of suitability, which is a later item on the agenda, if it were his opinion that Mr. Alfredo and Mr. Schegan will or will not provide the Commission with information concerning the suitability in connection with that agenda item. Mr. Sandre stated that the Commission was provided with Mr. Schegan's and Mr. Alfredo's testimony on May 26, 1994, with respect to the acquisition of those interests, and also provided with documents on the 26th of May and subsequently which would reflect those interests, and that was as far as he was prepared to go at this point in time. Chair May restated Mr. Sandre's statement stating that it was her interpretation that Mr. Alfredo would not be appearing to present any further evidence on suitability. Mr. Sandre asked for a definition on suitability.

Chair May asked if Mr. Alfredo was willing to appear and address the issue of suitability so the Commission could approve the options. Mr. Sandre indicated he had just said Mr. Alfredo would not be appearing for either a licensure hearing or to present evidence for the approval or disapproval of his purported option contracts. Chair May stated that would put the Commission in the position of approving or disapproving the options with no establishment of suitability for holding those options on the part of Mr. Alfredo. Mr. Sandre feels that everyone needs to understand that these are people who are coming before the Commission asking for the same status that he feels 99F talks about in terms of licensure. These people have option interests and have transferred those option interests. The Commission can preserve all the integrity they want to by determining whether or not the transferee of those option interests is suitable. The Commission would be able to make all the suitability determinations they want, but these people no longer want to be owners or working in the business. They did what they did to earn what they contracted to earn, and whether it is here or in federal court in Cedar Rapids, wherever it is, they intend to get it because he does not feel the Commission or anyone has the right to confiscate people's property rights, and he feels that is what would happen if the two issues - licensure and approval or disapproval of the purported option claims - are tied together.

Mr. Frank Schreck, an attorney representing United Gaming, Inc., indicated he was going to try to stand in the shoes of Mr. Alfredo

and Mr. Schegan with respect to the options as United Gaming has entered into an agreement to purchase the purported options subject to United Gaming obtaining a license in Iowa. He presented arguments in support of the approval of the options, and also indicated his support of some of the arguments made by Mr. Sandre. He indicated the laws show that the Commission could not have issued a license to GDREC without having first approved the transfer of shares. The Commission would have had to approve the agreement subject to the terms of the transfer or disapprove, and if the Commission takes the position that it was to be followed by another agreement, therefore invalidating the transfer which would then mean there had never been a transfer of the interests and Mr. Alfredo and Mr. Schegan would still retain their original interests. He feels that under either scenario Mr. Alfredo and Mr. Schegan hold interests that can be transferred. He also feels that Mr. Zwack, the beneficiary of the interest of Mr. Schegan and Mr. Alfredo, who filed the amended application, was the company's attorney as well as the attorney for Mr. Alfredo and Mr. Schegan, and also a licensee, failed to provide the Commission with the necessary information.

Chair May indicated that the requested documents are now before the Commission, and even though Mr. Zwack is continually being blamed for failing to present those documents to the Commission, it is now Mr. Alfredo and Mr. Schegan who are refusing to take the necessary steps in order for the Commission to approve the contracts. Regardless of when the documents were submitted, it is the Commission's position that Mr. Alfredo and Mr. Schegan must be able to establish their suitability, and what she is hearing from Mr. Sandre is that they are not willing to submit to a determination of suitability. If that is case, then it is not Mr. Zwack's failure or GDREC's failure with regard to the submission of the contracts, but Mr. Alfredo's and Mr. Schegan's failure to submit to the suitability hearings.

Mr. Schreck disagreed with the statement, stating that there two parts of the agreement - one part would have them holding a licensable ownership interest in GDREC and the other side of the agreement was that they had an option to sell those interests to a licensable third party without getting approved for licensing, which is what Mr. Alfredo and Mr. Schegan have chosen to do. Mr. Schreck indicated that had Mr. Alfredo and Mr. Schegan known on the day GDREC was licensed that they would not have an opportunity to sell those options, they would not have agreed to the transfer of those options, and GDREC would not have been licensed.

Mr. Bob Van Vooren suggested that the Commission recess the hearing at this point, without making any decisions, so that he could visit with his clients, with Mr. Alfredo and Mr. Schegan and Mr. Sandre.

Chair May indicated that she would have no difficulty in addressing the licensure of Mr. Alfredo and Mr. Schegan and the approval or

disapproval of purported option contracts together as they are closely related. She requested that Mr. Van Vooren, Mr. Schegan and Mr. Alfredo give the Commission the opportunity to approve or disapprove the contracts under the same rules and guidelines and procedures that would have existed in March, 1993.

Mr. Van Vooren asked if the Chair was suggesting that there may be different standards for suitability to own an interest in a gaming operation on an ongoing basis and be an owner forever or for a month or a year as opposed to suitability to transfer an ownership interest that they legitimately and in good faith believe they have. Chair May replied that was an argument she anticipated Mr. Van Vooren making the next day. She indicated that she would not disagree that does have some equity arguments on its side, but would not purport to make that determination at this time personally or on behalf of the Commission.

Chair May informed the public that the Commissioners were scheduled to meet for dinner at Anna's.

Chair May moved the licensure issue of Mr. Alfredo to 9:00 A.M. the following day, with the issues of the purported option contracts and the hearing on Mr. Schegan to also be addressed.

Commission Sealock made a motion to recess the meeting until 9:00 A.M. on Tuesday, June 21, 1994. Commissioner Canella seconded the motion. The motion passed unanimously. The meeting was recessed at 6:30 P.M. (Order No. 94-63)

The June meeting of the Iowa Racing and Gaming Commission was reconvened at 9:10 A.M. on June 21, 1994. A court reporter was present to record the testimony presented throughout the day. A copy of the transcript is available for public viewing in the office of the Iowa Racing & Gaming Commission, Lucas State Office Building - 2nd Floor, Des Moines, Iowa.

This session of the Commission meeting was recessed at 1:15 A.M. on Wednesday, June 22, 1994, and will reconvene at 10:00 A.M. on Monday, June 27, 1994, at the Hotel Savery unless otherwise notified.

Chair May reconvened the Iowa Racing and Gaming Commission meeting at 10:30 A.M. on Monday, June 27,1994, in the Terrace Ballroom of the Hotel Savery for the purpose of dealing with the license applications and suitability determinations of Mr. Alfredo and Mr. Schegan. In going through the file during the recess, she felt the following items, which were discussed during the hearings but were not officially marked, needed to be added as part of the file:

1) Chair May's letter of February 2, 1994 to Mr. Zwack, Mr. Schegan and Mr. Alfredo was not a part of the record, and has now been marked as Exhibit 73.

2) As exhibits were put together prior to the decision whether or not there would a suitability determination with regard to Mr. Alfredo, the June 4, 1993 letter option agreement was referenced, but was not made a part of the record - it will become Exibit 74.

3) In addition, the Commission was provided a copy of a letter from Patrick Fahey, the individual who hired Mr. Schegan in connection with the Mississippi Delta Queen in New Orleans, dated June 21, 1994, which will become Exhibit 75.

4) Further, the Commission has received a number of submissions from a variety of people dealing with the legal issues in connection with this case. They are:

a) A letter from Frank Schreck dated May 24, 1994,
b) A letter from Robert Van Vooren dated June 16, 1994,
c) Two letters from John Sandre dated June 16, 1994, dealing respectively with Mr. Schegan and Mr. Alfredo,
d) A letter from Douglas Gross dated June 23, 1994.

All of those letters will be deemed a part of the record. In addition, Mr. Sandre chose to submit closing comments to the Commission in a letter dated June 23, 1994, which is also made a part of the record.

Chair May felt that there were two items in the record which needed to be clarified. One was that people, at various time, talked about having units of ownership in GDREC. Her understanding is that while they may have claimed an interest and an entitlement to the units of ownership when issued, the units themselves were not issued until June of 1993. The second item that the Commission is aware of, and that the parties need to be aware of, deals with the background investigation that was done in connection with Worldwide when they were a potential entry into a limited partnership with the business arrangement of which Mr. Schegan was a part in Sioux City. Mr. Schegan indicated that Mr. Lura told him the day after the meeting or shortly thereafter that he could go ahead with Worldwide, that everything was fine. Worldwide never completed the background investigation information, or submitted it to the DCI, and the background investigation in connection with that was not done until sometime in early July which would be after the release of funds from the escrow account.

Mr. John Sandre, on behalf of Mr. Schegan and Mr. Alfredo, stated he did not have access to the information just relayed by Chair May as it is a part of the DCI investigation. Secondly, he indicated it was his recollection that it was Mr. Schegan testified that his conversation with respect to Worldwide was not with the DCI, but Mick Lura. Mr. Schegan also testified that he was in virtual daily contact with staff over several issues because everything was moving fast and furiously in trying to raise money.

Chair May deemed the first matter to be considered, based on the meeting agenda, is the licensure of Mr. Alfredo. She stated there were two alleged contracts specifically dealing with Mr. Alfredo - the first being the letter of April 22, 1993, and the second one dealing with the additional 10 shares dated June 4, 1993. She opened the floor for any comments or thoughts that anyone might have with regard to the licensure of William Alfredo in connection with the sale of the options.

Chair May went on to say the recess permitted her to review the rules, and particularly how they apply to this case. She wanted everyone to be aware of Code Section 99F.7(e) which deals with the issuance of options, and subsection 15 of 99F.7 which deals with what occurs in the event of the violation of any of those conditions. There are specific rules which deal with determination of suitability in ownership cases. One of those is 491-20.15 which provides in part that:

> "The Commission will not issue a license to an applicant if there is substantial evidence that the officers, directors, partners or shareholders of the applicant are not of good repute, or moral character. Any evidence concerning an officer's, director's, partner's or shareholder's current or past conduct, dealings, habits, or associations which is otherwise relevant to that individual's character and reputation may be considered. The Commission will decide what weight and effect evidence about an officer, director, partner or shareholders should have in the determination of whether there is substantial evidence that the individual is not of good reputation and character. Officers, directors, partners and shareholders who have a significant interest in the management, ownership, operation, or success of an application may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role in such matters."

Mr. Van Vooren indicated earlier that there might be different standards with regard to types of ownership interests claimed, and, to some extent, the rules anticipate that, depending upon an individual's role in the corporation, there may be different standards. Further, the Commission operates pursuant to Rule 21.11 which states:

> "It shall be the affirmative responsibility and continuing duty of each applicant and licensee to produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's qualifications are in accordance with the Act ..."

Further down in that rule is an interesting phrase which says:

> "It shall be the affirmative responsibility and continuing

duty of each person required to be qualified to provide all information, documentation and assurances pertaining to qualifications required or requested by the commission and to cooperate with the commission in the performance of its duties. Any refusal by any person to comply with a request for information from the commission or its staff, evidence or testimony shall be a basis for denial, revocation or disqualification. No license shall be granted to any applicant who fails to provide information, documentation and assurances required by or requested by the commission or who fails to reveal any factual material to qualification."

Chair May feels those are the rules which appear to be the most applicable to the licensure requirements.

Commissioner Canella had a question for Mr. Alfredo regarding the fact that he did not purchase the one million dollar annuity to cover the payments due the winners of the "Last Number Lotto". Commissioner Canella stated that it was his understanding that self-insurance was for the purpose of insuring your own assets, and did not feel it was valid when Mr. Alfredo said that was a normal business decision to self-insure or not, that Mr. Alfredo failed to self-insure somebody else's asset, not his own asset. Mr. Alfredo replied that the decision was not made solely by him. He sought advice from both legal and financial counsel. He also stated that he intends to make full restitution to all winners.

The Commissioners asked several more questions of Mr. Alfredo to clarify their understanding of statements and documents read during the course of the hearing. Mr. Sandre also made a few comments.

Chair May called for a motion with regard to the suitability of Mr. Alfredo to hold the options purportedly granted on April 22, 1993 and June 4, 1993, recognizing that legal interests might affect it and whether or not there was any ambiguity regarding the rights that go with those may not be determined by the Commission itself. Chair May informed those in attendance that she had put together some ideas on motions for the Commission with regards to Mr. Schegan and Mr. Alfredo which provide three options: 1) a motion to approve Mr. Alfredo for suitability for licensure by the Commission and to hold whatever options or interests that are ultimately determined to have been granted by those letters without restriction; 2) found suitable for the limited purpose of transferring those options within a short period of time to an entity which is found acceptable for licensure by the Commission; and 3) a denial of suitability where the rights that are determined to arise from the April 22 and June 4, 1993, letters would also be denied and some suggested follow-up as to how the Commission would handle any decision from a court of law.

Commissioner Canella read the motion to deny suitability which stated: "I move that this Commission find that, from a regulatory

standpoint, Mr. Alfredo has not demonstrated on the record that he is suitable for licensure or for control of option interests in the licensee GDREC and that, therefore, he be found unsuitable and that the claimed interests of Mr. Alfredo as demonstrated in the letter of April 22, 1993, and the letter of June 4, 1993 be denied approval by this Commission. Further, while this Commission is not the proper forum for determining what legal rights may arise by virtue of the letter of April 22, 1993 and/or the letter of June 4, 1993 or whether or not there has been compliance with the Operating Agreement of the licensee, to the extent that any court of law determines that Mr. Alfredo obtained control of any ownership interests or options by virtue of such documents or agreements, such interests were not approved by the Commission and therefore that the licensee be found in violation of Iowa Code Section 99F.15 and the Commission promptly schedule a hearing regarding revocation of the license of GDREC. Similarly, if any court of law or other tribunal should determine that Mr. Alfredo had any ownership interest in GDREC at any time during the licensure of GDREC which was not effectively transferred to Mr. Zwack as represented in the amendment to the license application, I move that the licensee GDREC be found in violation of Iowa Code section 99F.7(c) and (d) and that the Commission promptly schedule a hearing regarding revocation of the license of GDREC.

I further move that the staff and the Chair of the Commission prepare a detailed order in compliance with this motion for submission and approval of all Commission members by the end of the week. Any time period governing the appeal from the order shall begin running from the date of the filing of the order to be entered in compliance with this motion."

Commissioner Whittenburg seconded the motion. Hearing no further discussion regarding the motion, Chair May called for a roll call vote: Chair May - Aye; Commissioner Canella - Aye; Commissioner Sealock - Aye; Commissioner Van Horn - Aye; Commissioner Whittenburg - Aye. The motion passed unanimously. (Order No. 94-64).

Chair May brought up the next item on the agenda which dealt with the licensure of Mr. Schegan and any entitlement he may have with regard to the options in GDREC per the letter of April 22, 1993, which purports to grant five shares. There is also a signed contract of April 6, 1994, which purports to grant options to Mr. Schegan from Mr. Alfredo of seven shares. Chair May asked for any comments from the Commission, or any questions for Mr. Schegan.

Commissioner Sealock stated she had not found anything throughout the testimony or exhibits to convince her that a license should not be issued. Chair May asked whether she meant full licensure or a license for the purpose of transferring his rights. Commissioner Whittenburg stated that she disagreed with Commissioner Sealock. She feels the Commission needs to look at Mr. Schegan's current

record, not his past record. She feels Mr. Schegan used his power to delay the progress on the boat.

Mr. Schegan made some rebuttal comments regarding the opening comments by Commissioner Sealock and Whittenburg. The other Commissioners also asked questions of Mr. Schegan.

Commissioner Whittenburg made a final comment regarding "integrity". She feels that as Commissioners they are charged to insure the integrity within Iowa racing and gaming and all aspects of it, and the only way to accomplish that is to insure that all persons participating within the system, whether licensed or not, have the necessary integrity. She further stated that she questioned Mr. Schegan's integrity. Mr. Schegan responded.

There were additional questions asked of Mr. Schegan for clarification purposes. Mr. Sandre made some additional closing comments.

Chair May asked some additional questions of Mr. Schegan regarding the escrow funds which were released to Worldwide in Mr. Schegan's attempt to get a boat into Sioux City previously. Mr. Schegan responded to the questions.

Chair May called for a motion in resolution of the licensure application of Mr. Schegan. Commissioner Sealock made a motion which moved that Mr. Schegan be found suitable for the limited purpose of promptly transferring whatever ownership interests or options he might have by virtue of the letter of April 22, 1993 and/or the contract of April 6, 1994 to an entity which is licensed by this Commission to hold such membership units within ninety (90) days following entry of an order in compliance with this Motion. This Commission specifically limits the finding of suitability in this case to suitability for the purpose of transfer and does NOT include approval of suitability or licensure for any other purpose associated with the licensee, including operational involvement or actual control or ownership of any membership units.

While this Commission is not the proper forum for determining what legal rights might arise by virtue of the letter of April 22, 1993 and/or the contract of April 6, 1994 or whether or not there has been compliance with the Operating Agreement of the licensee, to the extent that legal ownership interests are found to be created by virtue of those documents and interests are properly obtained pursuant to the Operating Agreement, this Commission finds Mr. Schegan suitable to effect the transfer as outlined above.

I further move that the staff and the Chair of the Commission prepare a detailed order in compliance with this motion for submission and approval of all Commission members by the end of the week. Any time period governing the appeal from the order shall

begin running from the date of the filing of the order to be entered in compliance with this motion.

Commissioner Canella had a question regarding the inclusion of the contract of April 6, 1994, as that contract was never approved by the Commission. After some discussion, it was determined that the references to the contract of April 6, 1994, should be deleted from the motion. Commissioner Canella seconded the motion.

Chair May asked if there was any further discussion. Hearing none, she called for a roll call vote: Chair May - Aye; Commissioner Canella - Aye; Commissioner Sealock - Aye; Commissioner Van Horn-Aye; Commissioner Whittenburg - Nay. The motion passed by a 4-1 vote. (Order No. 94-65)

The next item on the agenda is the hearing of Mr. Joe Zwack and the Greater Dubuque Entertainment Company's Order to Show Cause. A Motion for Continuance has been filed in the matter. The hearings have been continued to the July meeting subject to specific stipulations which are:

1) In the interim, Mr. Zwack is not to be involved in the operations of GDREC;
2) No distributions based on equity interests of any assets of GDREC; and
3) That GDREC take whatever actions are necessary to bring before the Court the determination of what ownership rights may arise by virtue of the April 22, 1993 letter and the June 4, 1993 letter

Chair May asked if the Commission had GDREC's agreement with those terms. Mr. James Gilliam, attorney who filed the request for a continuance on behalf of GDREC, indicated there were no questions regarding the first two provisos; however, on the third issue, he asked for an extension until July 22nd. It was noted that the Commission meeting is scheduled for July 21st. Mr. Zwack nor his attorney were present to respond to the stipulations for the continuance; however, Mr. Gilliam felt they would agree. Mr. Jeff Farrell informed Chair May that he had conflict with regard to having the hearings on July 21st.

Mr. Bob Van Vooren requested clarification in regards to the motion made regarding Mr. Schegan. The motion states that Mr. Schegan must transfer his ownership rights to a licensed entity within ninety (90) days of the filing of the order. He is not sure that United Gaming could be licensed within the required time frame. Mr. Ketterer indicated that the necessary forms had been forwarded to United Gaming and the Commission is waiting for those documents to be returned, at which time it will require six weeks to perform the background checks. Mr. Bill Brosnahan indicated that the time frame could be a little optimistic, but would not know until he had

viewed the background information. Chair May indicated the Commission would deal with it if it became an issue.

Chair May stated there was a strong possibility the Commission meeting scheduled for August 18th would be held on Friday, August 19th instead.

Chair May indicated that an appropriate date for the hearings on Joe Zwack and GDREC will be determined within the next week or so. The date will be connected with the regular commission meeting in order to defray costs.

Chair May asked if there was any other business to come before the Commission. Hearing none, she called for a motion to adjourn. Commissioner Canella made a motion to adjourn, with Commissioner Whittenburg seconding the motion. The motion passed unanimously. The meeting was adjourned at 1:53 P.M.

MINUTES TAKE BY JULIE HERRICK, CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
JULY 21, 1994

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, July 21, 1994, in the Auditorium of the Wallace State Office Building, Des Moines, Iowa. Commissioners present were: Chair, Lorraine May; Vice-Chair, Richard Canella; and members Rita Sealock, Del Van Horn and Nancy Whittenburg.

Chair May called the meeting to order at 9:05 a.m., and entertained a motion to approve the agenda. Commissioner Canella so moved, with Commissioner Sealock seconding the motion. The motion passed unanimously.

Chair May called for a motion to approve the minutes of the June 20 - 21, 1994 and June 27, 1994 meetings. Commissioner Sealock made a motion to approve the minutes as submitted, with Commissioner Van Horn seconding the motion. The motion passed unanimously.

Chair May called on Jack Ketterer, Administrator of the IRGC, to discuss the various rule filings on the agenda. Mr. Ketterer explained that Items 3a, b and c were rules which were previously approved by the Commission with some minor changes being made. Item 3a is a notice to final adopt Chapter 13 which consolidated licensing rules from different chapters regarding riverboats and racing. Mr. Ketterer recommended approval. Commissioner Whittenburg made a motion to Final Adopt Chapter 13. Commissioner Canella seconded the motion which passed unanimously. (See Order No. 94-66)

Item 3b deals with Amendments to Chapters 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 20, 22, 24 and 25. Most of the changes in these chapters are to incorporate the model rules of the Association of Racing Commissioners International. Another rule was modified after a greyhound track steward expressed concerns regarding the schooling requirements. Another change required directors and corporate officers of companies applying for a manufacturer's and distributor's license to submit to a background investigation. Commissioner Van Horn made a motion to Final Adopt the amendments to Chapters 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 20, 22, 24 and 25. Commissioner Whittenburg seconded the motion. Chair May asked for any public comment on the rule amendments. Hearing none, she called for a vote on the motion. The motion passed unanimously. (See Order No. 94-67)

Mr. Ketterer explained that Item 3c deals with rules previously viewed by the Commission which were filed Emergency as well as under a Notice of Intended Action. The rules were filed Emergency as they dealt with new legislation. One of the rules which was not emergency adopted was the language dealing with the use of credit cards and whether third parties could accept credit cards for the purchase of coins, tokens or other forms of credit. The acceptance of credit cards by a third party for the purchase of coins, tokens or other forms of credit is not prohibited by statute. The staff recommended final adoption of all the rules. Chair May called for any public comment. Hearing none, Commissioner Canella made a motion to adopt the amendments to Chapters 20, 21, 24, 25 and 26. Commissioner Sealock seconded the motion which passed unanimously. (See Order No. 94-68)

Mr. Ketterer explained that Item 3d was the Notice of Intended Action amending the definition of a "video machine" at racetrack enclosures. For racetrack enclosures, video machines shall mean any video poker, video blackjack, video keno or similar games requiring a decision on the part of a player after the wager has been made but prior to completing the game. Video machine shall also include a video lottery machine which dispenses payouts in the form of a paper credit slip. Mr. Ketterer indicated that staff felt this proposed rule carried out the directions of the Commission from the June meeting, and it was the staff's recommendation to approve the proposed rule. Commissioner Van Horn asked for clarification on whether or not the tracks could have video poker. Mr. Ketterer said under the proposed rule they could not. Chair May called for any public comment.

Jim Campbell, representing Iowa West Racing Association, indicated he had filed a Joinder in regard to the rule in which he attempted to bring the Commission's attention to the existing law as stated by the Iowa Supreme Court. Under that law, slot machines have a broad definition. He urged the Commission to reconsider the proposed rule as presented, and look at the decisions of the Iowa Supreme Court.

Chair May asked if there were any additional public comments regarding the proposed rule. Commissioner Sealock asked for comments from Jeff Farrell, Assistant Attorney General for the Commission. He indicated the rule is consistent with legislative intent within the discretion of the Commission, and he did not see any inconsistencies with the statute as it stands. He felt it is legally supportable and does not see any problems with the rule as written.

Chair May called for a motion with regard to the rule. Commissioner Canella made a motion to accept the definition as written by staff and to file a Notice of Intended Action. Commissioner Van Horn seconded the motion, which passed unanimously. (See Order No. 94-69)

Chair May requested that staff draft a letter to the Legislative leaders, with a copy to the Governor's office, requesting clarification as to what they intended. Mr. Ketterer stated that there is no distinction with respect to the riverboats or proposed legislation leading up to the passage of HF 2179 between the different types of electronic gaming devices. It is not clear what types of games the Legislature intended the racetrack enclosures to have. Gambling games are any games that are authorized by the Commission, but the statute then cites exceptions for the racetrack enclosures which include table games of chance and video machines.

Chair May brought up the Application for Renewal of License and Approval of Live and Simulcast Racing Dates for 1995. Due to some changes that have been requested with regard to certain dates, the Commission took the National Cattle Congress first.

Augie Masciotra from the National Cattle Congress/Waterloo Greyhound Park, discussed Waterloo's request to modify the live racing season for 1994-95. Waterloo Greyhound Park's live racing season was originally scheduled to end on April 30, 1995; they are now requesting the live racing season end on April 23, 1995. The second request is to grant the dates of October 29, 1995 through April 21, 1996, which does not overlap with the request submitted by Dubuque Greyhound Park. He does not feel the live racing season is dependent on the passage of the second referendum.

Mr Ketterer stated the Commission needed to have the following items before them at the September 15th Commission meeting: racing officials, security plan, kennel contracts, and the proposed kennels to participate at the meet. These need to be approved if live racing is to begin on November 1st. If the referendum is not held in September, he feels there needs to be some type of cash bond or escrow amount to insure the live race meet would be completed should the second referendum fail.

Chair May asked for the staff's recommendation regarding the request from Waterloo Greyhound Park for racing dates. Mr. Ketterer indicated the request to reduce the racing dates by one week from April 30th to April 23, 1995 should be granted. Since Waterloo's racing meet will not begin until the fall of 1995, he feels approval of these dates should be deferred until the future is a little clearer. Mr. Masciotra agreed with the deferral and requested this item be deferred until October, 1994.

Hearing no additional public comments, Chair May called for a motion to approve the reduction of the 1994-95 racing season by one week and to defer the approval of the 1995-96 racing dates until the October, 1994 meeting. Commissioner Canella so moved with Commissioner Whittenburg seconding the motion. The motion passed unanimously. (See Order No. 94-70)

Chair May called on Bruce Wentworth, General Manager of Dubuque Greyhound Park, to discuss their request for dates. The first portion requests live racing dates from April 29 through October 22, 1995. They are also requesting authority to continue simulcasting the signal from Bluffs Run, and requesting that should any out-of-state simulcasting become economically viable, that they be allowed to receive such signal(s).

Commissioner Sealock asked if there was any information available regarding out-of-state signals. Mr. Wentworth indicated all they were asking at this point was for permission to search for an out-of-state signal, but would come before the Commission with an actual request. Mr. Ketterer recommended approval of all three parts of the request. Commissioner Sealock made a motion to approve Dubuque Greyhound Park's request for live racing dates, simulcasting from Bluffs Run and to search for an out-of-state simulcasting signal. Commissioner Whittenburg seconded the motion which passed unanimously. (See Order No. 94-71)

Chair May called on Mr. Campbell to present Bluffs Run's request for live racing dates. Their request is for January 3 through December 31, 1995, with a holiday closing of two weeks in December. Mr. Ketterer asked Mr. Campbell about the problems they have been experiencing with the new track surface. Mr. Barry Sevedge of AIM, Inc. had indicated they would be replacing the surface and this would take approximately one week which would be made up during December, but hoped it would coincide with construction to be done when adding gambling games at the facility. Mr. Ketterer requested that the Commission be notified as soon as a decision is made. Mr. Ketterer recommended approval. Commissioner Whittenburg made a motion to approve the request, with Commissioner Van Horn seconding the motion. The motion passed unanimously. (See Order No. 94-72)

Chair May called on Mr. Timmons to discuss Prairie Meadow's request. Mr. Timmons stated they are requesting a window of dates from April 17, 1995 through December 17, 1995. They are looking at the feasibility of running a split meet for 1995. One of the factors to be considered is whether Canterbury Downs is going to have a meet next year. Their racing dates would affect the availability of horses. If a split meet is run, they would like to run a thoroughbred meet during the summer months for 46 days and then run a 15-day quarterhorse meet in November.

Mr. Ketterer indicated that he had spoken with Pete Scarnati, Racing Secretary at Prairie Meadows, regarding the possibility of a split meet. He feels it would be wise to defer, without prejudice, the granting of dates until more information is available and the racing season is more established as the dates they are requesting don't start until April 1995. Mr. Ketterer felt the decision could be deferred until September.

Chair May called for a motion to defer a decision regarding the race dates at Prairie Meadows until the September meeting. Commissioner Canella so moved, with Commissioner Whittenburg seconding the motion. The motion passed unanimously. (See Order No. 94-73)

The next item on the agenda was contract approvals. Chair May called on Terry Hirsch, Director of Riverboat Gambling, to discuss the following contracts submitted by the Dubuque Diamond Jo:

1) Conlon Construction Company,a related party contract, for completion of a ramp on existing boating ramp for $55,000. There is also a supplemental agreement from the Dubuque Racing Association (DRA) agreeing to reimburse Greater Dubuque Riverboat Entertainment Company (GDREC) for the cost as these are permanent improvements to the dockside. The DRA leases the facility to GDREC.

2) Cummins Allison for money handling equipment; and

3) Illinois Armored Car.

Mr. Hirsch recommended approval of these contracts. Commissioner Canella stated he feels it is bad business policy to award contracts to a related party without a bidding process. Chair May indicated this was a time and materials arrangement so that the exact amount of the contract could not be known until after the completion of the work. Commissioner Canella requested that the Dubuque Diamond Jo contracts be handled separately.

Chair May called for a motion regarding the Conlon Construction Co. contract. Commissioner Whittenburg made a motion to approve this contract. She felt payment should be made since the work was complete. Commissioner Van Horn seconded the motion. Chair May stated that she shared Commissioner Canella's concern with regard to the bidding process which is not easy to do in a time and materials arrangement. Also, the Commission has not required bids in this type of situation previously, so it would be difficult to deny a contract based on that stipulation at this time. A roll call vote was taken.

Commissioner Whittenburg clarified that the motion for approval is based on the fact that the work has been done, and appears it was necessary and not a luxury item. Commissioner Van Horn indicated that his second was based strictly on staff recommendation.

Chair May - Aye
Commissioner Canella - No, protesting related party contracts being awarded without a bidding process
Commissioner Sealock - Aye, feels the individual needs to be paid for his work, but does not disagree with Commissioner Canella

Commissioner Van Horn - Aye, and agreed with Commissioner Sealock's comments
Commissioner Whittenburg - Aye

The motion passed 4-1. (See Order No. 94-74)

Chair May called for a motion to approve the contracts with Cummins Allison and Illinois Armored Car Company. Commissioner Canella so moved, with Commissioner Sealock seconding the motion. The motion passed unanimously. (See Order No. 94-75)

The next item on the agenda was seven contract approval requests from the Mississippi Belle II. Mr. Hirsch presented the following contracts:

1) Clinton National Bank - Increases the line of credit from $3 million to $4.5 million

2) Roberts River Rides - related party loan - loan to assist with the construction of the vessel for Clinton

3) Kehl Riverboats - related party loan to help Catfish Bend with its cash flow situation

4) Pepsi Cola Contract - a contract with the national pricing group which is purchased through Gil Baker Distributing. Mr. Baker is a member of the non-profit board. Mr. Baker has no say so regarding the contract.

5) Valley Precision Sheet Metal - slot stands for the new boat. The local company's quote is higher than Valley Precision, and Valley Precision has been used previously.

6) Trans Sierra - for surveillance equipment for the new boat

7) Pauslon Dice - for gaming equipment

Mr. Hirsch recommended approval of the above contracts. Commissioner Van Horn made a motion to approve the contracts with Commissioner Canella seconding the motion. The motion passed unanimously. (See Order No. 94-76)

The next item on the agenda was the approval of the Management and Lease Agreement between the Sioux City Riverboat Corporation (SCRC) and Argosy Gaming Corporation. Bruce Crary, representing the Sioux City Riverboat Corporation, came forward and presented the Commissioners with copies of the proposed Lease Agreement which they hope would become effective on September 3, 1994. The Management and Lease Agreement indicates that at some future point Argosy will become a holder of a license in some form - either through a partnership or purchase of stock in Sioux City Riverboat

Corporation; but due to the time constraints they are going with the Management and Lease Agreement for the time being.

They would like to have the Management and Lease Agreement approved today so that Argosy can make the commitments they need to make to get a new docking facility built in time for the arrival of the new boat and complete any other arrangements needed before the old boat leaves. The document presented today indicates it is subject to the approval of the Commission and the City of Sioux City and the Missouri River Historical Development. Both of the latter organizations have approved Argosy and the proposed Agreement.

Commissioner Canella informed Mr. Crary that the Commissioners had received the Management and Lease Agreement with very little time to review it prior to the meeting. He also stated that it was his understanding that the background checks of Argosy had not been completed. Commissioner Canella stated that it was his opinion that nothing should be approved prior to the completion of the background checks.

Chair May asked Mr. Crary if this proposed Management and Lease Agreement is contingent upon the continuation of the exclusivity agreement. Mr. Crary indicated that if the exclusivity clause is removed, the management fees go up considerably. The SCRC and the City of Sioux City feel it is very important that the exclusivity clause remain in effect for the time it was originally granted. In their discussions with the people looking at putting a boat in Council Bluffs, all but one feel they could not have a boat in place prior to the exclusivity agreement terminating on January 29, 1996. Chair May asked for any statistics showing the percentage of patrons coming from the Council Bluffs area, and what the SCRC had done to date to market the Council Bluffs/Omaha area. Mr. Crary indicated that not much had been done to date, but that Argosy would be implementing an extensive marketing program when the new boat arrives.

Jeff Roberts, Associate General Counsel for Argosy Gaming Corp. located in Alton, Illinois, presented a brief background statement on Argosy, their marketing strategy, and answered various questions addressed to him by the Commissioners. He indicated that in order to get gaming equipment into the state to be ready to put on the boat, Argosy would need to have, at the very least, the portion of the management agreement dealing with the lease of the vessel and gaming equipment to the licensee approved.

Minnette Asbury, a representative from Gaming Development, was not involved with the original marketing effort. She stated there are statistics which show the Omaha activity on the boat and they will make those available to the Commission when they are retrieved from the computer. She does not feel those figures will be representative of what could have been done with the Omaha market. She feels the elimination of the exclusivity agreement would drop

the opportunity for them to market to 769,000+ people in the adult population over 21 or 33.4% of the primary and secondary market.

Mayor Bob Scott of Sioux City made a few comments regarding the dockside facilities and the investments made by Sioux City based on the exclusivity granted to them by the Commission. He feels if the exclusivity agreement is not continued, it will have a significant impact on the success of the boat.

Mr. Crary asked the Commission to approve the Management and Lease Agreement as to form so they know the current format is an acceptable format. He also stated that Argosy is aware they can not take over management without all background checks being completed in a satisfactory manner.

Commissioner Canella asked if there were two separate issues before them - approval of the Management and Lease Agreement and exclusivity. Chair May stated that exclusivity was not on the agenda for determination, but it is one of the variables which is taken into consideration in the contract. Chair May does not feel the Commission can avoid the exclusivity issue as the Commission has received notice of an intent to file an application in the Council Bluffs area with an anticipated opening date markedly before the January, 1996 expiration date of the exclusivity agreement.

The Commission took a short break at 10:50 a.m. and reconvened at 11:10 a.m.

David Friedman, Vice President of Corporate Development and Legal Affairs for President Riverboat Casinos, addressed their concerns regarding the continuation of the exclusivity issue for Sioux City. He does not feel that Sioux City/Argosy has any evidence that another boat would have an adversarial effect on their level of business. He questioned why the Missouri River is being treated differently than the Mississippi River regarding the issue of exclusivity. He would like to submit extensive comments to the Commission prior to the next meeting regarding marketing analysis, legal analysis, etc.

Chair May asked for a staff recommendation regarding the Management and Lease Agreement. Mr. Ketterer indicated that staff would recommend the matter be deferred pending the completion of the background checks by DCI. Mr. Crary clarified the fact that unless the Lease is approved, the boat can not move up the river and the machines can not be brought into the state. He indicated he had several comments regarding the statement from Mr. Friedman, but he felt this meeting was not the appropriate time to be discussing the exclusivity issue as Argosy is not the applicant. He would like to have the Management and Lease Agreement approved subject to the satisfactory completion of the DCI background checks.

Chair May explained that invariably it seems to be the Commission who is called upon to take the risk of everything falling into place at a later date, and often times to the detriment of the state. She feels the management and boat lease agreement are inextricably intertwined and one can not be approved without approving the other. She feels the management agreement contemplates a new company coming in and operating the boat down to the point that it dictates to the Board of Directors of the licensee, which has a significant impact on the licensee as it currently exists, and is contingent on the creation of a limited partnership and the transfer of ownership.

Commissioner Van Horn made a motion to defer approval of the Management and Lease Agreement between Sioux City Riverboat Corporation and Argosy Gaming Corporation. Commissioner Whittenburg seconded the motion, and added that all of the Commissioners are supportive of the new agreement and operation and regret the fact they can not move forward at this time due to past experiences, and hope to be able to move forward at the August meeting. Chair May called for the vote regarding the motion to defer action on the Management and Boat Lease Agreement submitted by Sioux City Sue. The motion passed unanimously. (See Order No. 94-77).

John Mugan, member of MRHD, the non-profit organization at Sioux City and also a lawyer, spoke regarding the agreement granting exclusivity to January, 1996.

Chair May asked for direction from the Commission as to whether or not they wanted to deal with the exclusivity issue at the August meeting or take no further action. Commissioner Canella indicated he feels there is nothing to discuss. Commissioner Sealock indicated she agreed with Commissioner Canella, as did Commissioner Van Horn. Commissioner Whittenburg stated that until someone files a formal challenge with the Commission, the Commission should not discuss or hear any arguments relating to the exclusivity issue. She feels the exclusivity issue should be placed on the agenda by an outside party. Exclusivity will not be placed on the August agenda.

Chair May called on Mr. Ketterer to discuss the bond approval for Prairie Meadows which is up for renewal on August 15, 1994. It is the staff's recommendation that the bond be approved. Commissioner Canella so moved, with Commissioner Van Horn seconding the motion. The motion passed unanimously. (See Order No. 94-78)

The next item on the agenda is the hearing regarding Iowa West Racing Association's non-payment of a portion of the 1993 pari-mutuel tax. Mr. Campbell indicated the item was on the agenda based on a complaint filed by Mr. Ketterer which stated that Iowa West had not paid a portion of taxes that were determined to be

owed. Mr. Campbell gave a brief history on the background of the statute regarding taxes. Mr. Campbell submitted a Response to Hearing Complaint of Administrator and Brief in Support of Licensee's Response to Hearing Complaint. He stated the issue before the Commission involves $422,000.00 of taxes which the Racing and Gaming Office asserts Iowa West owes for the 1993 season. Iowa West feels they do not owe the taxes due to their interpretation of Iowa Code Section 99D.15(3)(c)(2).

Commissioner Canella asked Mr. Campbell why they didn't pay the tax bill and then protest the amount. Mr. Campbell indicated the persons making the decision did not feel there would be a dispute over the amount paid. The licensee received a letter demanding payment of the amount owed on April 11, 1994. The tax had been forwarded to the Commission office on January 5, 1994.

Mr. Farrell stated the State's position is that while 1% of the gross sum wagered is to be set aside, there is no connection with the tax liability that is due the state. This is demonstrated by the legislative history in this area. He noted the 1991 amendment where the set aside is established for the six percent refers to 1/6 of the tax liability of the licensee. He feels the one percent to be set aside in 99D.15(3)(c)(2) is not part of the tax liability and the licensee can not use that percentage as a credit. Mr. Farrell stated he felt the Commission should order the licensee to pay the one percent they owe by a set date, and establish a penalty if the payment is not made by said date. Mr. Farrell suggested license suspension on that date if payment has not been made, or another appropriate penalty as established by the Commission. The licensee would also be assessed interest on the outstanding amount owed. Mr. Farrell suggested that the statutory rate of interest be assessed, with Mr. Ketterer or himself determining the current rate.

Commissioner Canella asked about assessing a fine of $1,000/day. Mr. Farrell stated the Commission has a right to assess a fine of up to $1,000, but was not sure that it could be a daily fine in that amount for the same offense. Commissioner Canella clarified that the Commission does have the right to assess a fine, suspend or revoke the license.

Chair May asked for any additional public comment. Commissioner Canella expressed his opinion that an adequate interest rate be assessed, plus an appropriate fine recommended by staff. He stated one of the factors for revocation is the failure to pay a monetary obligation resulting from racing.

Commissioner Whittenburg stated that the Commission should set a specific date for payment, and let staff determine the statutory interest rate that should be applied.

Chair May stated she had no qualms about charging the highest legal

interest rate permitted by statute. She felt it would be difficult to ascertain the economic impact of a penalty without knowing the difference between the interest earned on their money and the highest legal interest rate. Her preference was to issue an order stating the amount of tax due, and that the interest be paid at the highest level permitted by statute, and defer the determination of a penalty until the effect of the interest amount is known. It was determined that the tax payment would be due 20 days from the date of the order. As the licensee will not know the interest rate, the interest is due ten days after receiving notification of such from the Administrator. Commissioner Canella so moved, with Commissioner Van Horn seconding the motion. The motion passed unanimously. (See Order No. 94-79)

Mr. Ketterer gave a brief statement on Chair May and her tenure as Chair of the Commission.

Chair May brought forth the next item on the agenda - the market potential for a riverboat in Bettendorf. Dave Millage, an attorney representing the Riverbend Regional Authority who was the former license holder for the Diamond Lady, and hopefully the license holder for a new boat in Bettendorf, gave a brief statement regarding the feasibility and success of a boat there. The Bettendorf area approved the recent referendum by 80%. He distributed a letter from the Lady Luck Gaming Corporation which hopes to operate the new boat in Bettendorf.

Chair May stated that this item was placed on the agenda as a discussion item, not an action item, to determine whether or not there was anyone who has any objections to the concept of a third boat going into the Quad City region. She opened the floor to public comment.

Dave Friedman came forward and reiterated that The President is in favor of competition and that what is good for eastern Iowa is good for western Iowa. He touched on the exclusivity issue by stating that competition can not be good in one area of the state and bad in another area. Chair May indicated that she remembered discussing that issue with John Connelly when the original applications were submitted by Bettendorf, Southeast Iowa, and The President, and he stated that all applications could be approved. Mr. Friedman stated that he had attempted to locate the actual contract granting exclusivity to Sioux City, but was unable to do so and believes that a contract was never executed.

Mr. Friedman asked for clarification on the Commission's earlier decision to not consider the exclusivity issue unless a formal challenge was filed. He asked if The President filed a challenge in a timely manner, if that would be heard in the context of a challenge at the next meeting. Chair May indicated that it could.

Chair May asked if there was any further public comment regarding the possibility of a riverboat license being issued for Bettendorf. Hearing none, Chair May informed the Bettendorf delegation that the Commission was not in a position to make a ruling regarding the possibility of a third boat in the Bettendorf area. She encouraged them to use their best judgement and act in a prudent manner.

Chair May moved on to Administrative Business and the election of a new chair for the Commission. Commissioner Sealock made a motion to nominate Commissioner Canella as the new chair, with Commissioner Whittenburg seconding the motion. The motion passed, with Commissioner Canella abstaining. (See Order No. 94-80)

Chair May passed the gavel to Chair Canella for the rest of the meeting. The first item on Chair Canella's agenda was the nomination of a vice-chair. Commissioner May nominated Commissioner Sealock as vice-chair, with Commissioner Whittenburg seconding the motion. The motion passed with Commissioner Sealock abstaining. (See Order No. 94-81)

Chair Canella called for a motion to adjourn to Executive Session. Commissioner May moved to go into Executive Session for the purpose of reviewing pending litigation and confidential financial matters. Commissioner Van Horn seconded the motion. The motion passed unanimously. The Commission moved into Executive Session at 1:00 p.m.

Following Executive Session, Chair Canella called for a motion regarding the financial transaction submitted to the Commission by the President. Commissioner May made a motion that the financial transaction as proposed by The President Riverboat Casinos and discussed in Executive Session be approved as long as the terms are within one-half percent of those presented to the Commission, and will remain subject to Commission approval upon transfer. Commissioner Sealock seconded the motion which passed unanimously. (See Order No. 94-82)

Chair Canella called for a motion for adjournment. Commissioner Van Horn so moved with Commissioner Whittenburg seconding the motion. The motion passed unanimously. The meeting adjourned at 1:30 p.m.

MINUTES TAKEN BY JULIE HERRICK, CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
AUGUST 19, 1994

The Iowa Racing and Gaming Commission (IRGC) met on Friday, August 19, 1994, in the Symposium of the Midway Hotel in Dubuque, Iowa. Commissioners present were: Chair, Richard Canella; Vice-Chair, Rita Sealock; and members Lorraine May, Del Van Horn and Nancy Whittenburg.

Chair Canella called the meeting to order at 8:30 am, and entertained a motion to approve the agenda. Commissioner Sealock so moved, with Commissioner May seconding the motion. The motion passed unanimously.

Chair Canella called for a motion to move into Executive Session. Commissioner May made a motion to move into Executive Session for the purpose of reviewing backgrounds. Commissioner Whittenburg seconded the motion which passed unanimously.

Following Executive Session, Chair Canella called for a motion to approve the minutes from the July 21, 1994 meeting. Commissioner Whittenburg made a motion to approve the minutes as submitted, with Commissioner May seconding the motion. The motion passed unanimously.

Chair Canella stated there had been a request by representatives from Bettendorf to make a public comment. Bob Ellis, Corporate Counsel for Lady Luck, Bettendorf, submitted Bettendorf's application to operate an excursion gambling boat. He introduced Spencer Geisenger, General Manager, and Martha Sue Smith, Vice President of Public Relations with Lady Luck in Mississippi who will be developing the Iowa project.

Chair Canella stated that the workload is becoming excessive for the limited staff of the IRGC and Division of Criminal Investigation. The IRGC could possibly receive six applications from the Council Bluffs/Carter Lake area, and just received the Bettendorf application, and are in receipt of an application from the Marquette area. He expressed his concern over news reports indicating that certain boats will be operational by specific months; and indicated that the Commission would not submit to any pressure or agree to shortcuts in the licensing procedure.

Chair Canella brought up the agenda item regarding the hearing in the Iowa West Racing Association. Mr. Ketterer, Administrator of IRGC, stated that the Commission had received word from James Campbell, attorney for Iowa West, requesting a continuance on this matter. At the July meeting, it was agreed that the highest rate of interest allowed by the State would be charged (10%) on the unpaid pari-mutuel tax. Mr. Campbell indicated a check was being sent to the IRGC office by Federal Express. Mr.Ketterer stated the item was placed on the August agenda to determine whether or not an additional penalty was needed above and beyond the interest payment. He further indicated that it would be the staff's recommendation that if there is still a desire to initiate a penalty proceeding, that it would be continued. However, if the Commission feels the payment of the tax plus interest is sufficient, the matter should be decided. Chair Canella stated that it was estimated Iowa West had their funds invested at 5% rate, which would give the Commission a penalty of 5% or $11,000 - $12,000.00. Chair Canella asked the other Commissioners if this was sufficient, or if they desired to assess an additional penalty. Chair Canella called for a motion stating that the $11,000.00 interest payment was sufficient. Commissioner Van Horn so moved, with Commissioner Sealock seconding the motion. The motion passed unanimously. (See Order No. 94-83)

Chair Canella brought up the Request for Rehearing and Correction of Record regarding John Schegan and his suitability for license. Chair Canella called on John Sandre, legal counsel representing John Schegan. Mr. Schegan is satisfied with the Commission's finding that he was suitable for the purpose of transferring his shares to a suitable third party within 90 days, and they are not asking for additional relief. Mr. Sandre indicated he felt many of the factual findings and conclusions in the July 5, 1994, ruling are incorrect. It is Mr. Sandre's position that the matters which they take exception to could be resolved favorably for Mr. Schegan if they were allowed to go forward specifically on those issues and present additional evidence. Mr. Sandre requested a decision that Mr. Schegan would be entitled to a rehearing in an effort to correct the record. Mr. Sandre stated that Mr. Zwack's attorneys have tendered the five shares granted to Mr. Schegan to the Federal Court to hold until the outcome of the pending litigation is determined. This will prevent Mr. Schegan from transferring those shares within the 90-day time frame.

Commissioner May stated that it was not the Commission's intent to catch Mr. Schegan in some technicality with regard to the transfer of the shares. It is her thought that as long as Mr. Schegan has done everything he can to transfer those shares, then he has met his requirements.

Chair Canella asked for any additional comments regarding the request of John Schegan for rehearing. Commissioner May stated that this had been an ongoing matter for several months. She

stated that many items referenced in the Request for Rehearing and for submission of additional material and correction of the record stem from differences of opinion regarding the conclusions reached on the record, and not actual situations in which there is a lack of evidence in the record. She indicated that, in her opinion, the Commission has done an extraordinary job in accommodating Mr. Schegan and his request for additional time to submit the material, and his initial request for the extension when the suitability determination was originally to have been made in May. In her opinion, Mr. Schegan has been afforded due process, and she did not see anything in the submission before them that would alter the findings.

Commissioner Van Horn made a motion to deny the Request for Rehearing from Mr. Schegan. Commissioner Whittenburg seconded the motion. Hearing no further discussion, Chair Canella called for a roll call vote with all voting Aye. (See Order No. 94-84)

Chair Canella brought up the next agenda item which was the Request for Rehearing of William Alfredo regarding his suitability for license. Mr. Sandre requested that the Commission apply Commissioner May's comments to Mr. Alfredo, and in so doing, he stated that applying that logic to Mr. Alfredo's situation would lead the Commission to the opposite result of the decision just reached by the Commission. Mr. Sandre stated that Mr. Alfredo failed to receive notice as to what the concerns were, what the claims were, or what disclosures or other information, if any, had been provided to the Commission from any source, including the DCI in Executive Session. It was their position that it was not necessary for the Commission to determine suitability for Mr. Alfredo to have and maintain an interest in a corporation which he had contracted for and provided services for. Mr. Sandre indicated there were a lot of differences from Mr. Schegan's case, as well as many similarities. Mr. Sandre stated that in the Request for Rehearing he had attempted to resolve areas concerning Mr. Alfredo's involvement with Dover and Unidyne.

Chair Canella informed Mr. Sandre, that in his opinion, Mr. Alfredo had about a year's notice regarding the suitability hearing. Mr. Sandre indicated that they were not fully aware that the issue of his suitability would be taken up until they received notice of the agenda item.

Commissioner May informed Mr. Sandre that Mr. Alfredo was present during the Commission meeting in February or March 1993, at which time he was told that in order to own any stock in the corporation he would need to be approved and pass a DCI check. Mr. Alfredo also received a letter from her in February, 1994, when she became aware of claimed interests, and was again informed that the contracts would need to be approved and a determination of suitability regarding any claimed ownership interests. She stated it was hard for her to perceive how Mr. Alfredo can state he did

not know he needed to proceed with a suitability determination. Chair Canella called for any additional comments. Hearing none, he entertained a motion by Commissioner Van Horn to deny the request for a rehearing by Mr. Alfredo. Commissioner Whittenburg seconded the motion. He asked for a roll call vote with all voting Aye. (See Order No. 94-85)

Mr. Sandre requested that the attachments with his Requests for Rehearing be made a part of the record. The request was granted.

Chair Canella called on Terrence Hirsch, Director of Riverboat Gambling for IRGC, to discuss the excursion schedule submitted by Catfish Bend Casinos. When the boat begins operations, they will offer cruises from 10:00 am to 12:00 noon Monday through Friday. While the boat is in Ft. Madison, the casino will be in operation from 8:00 am to 2:00 am on Monday and Tuesday. Continuous casino operations will be conducted from 8:00 am Wednesday through 2:00 am on Monday. The casino would have the same hours of operation for the dockside season in Burlington. The non-profit organization has approved the excursion schedule. Mr. Hirsch recommended approval of the excursion schedule. Chair Canella called for a motion for the approval or disapproval of Catfish Bend's request. Commissioner Whittenburg moved to approve the excursion schedule of Catfish Bend Riverboat Casino. Commissioner Sealock seconded the motion, which was passed unanimously. (See Order No. 94-86)

Chair Canella requested an update regarding Catfish Bend. Mr. Bob Winkler, Controller for Catfish Bend Casinos, gave the update. They believe that the boat replacing the Mississippi Belle II will be in Clinton by the end of September/first of October. They anticipate they will have a month in Ft. Madison before going to Burlington for the winter season.

Chair Canella called on Mr. Hirsch to discuss the contracts submitted by the Mississippi Belle II. Mr. Hirsch recommended approval of the contracts for Green Duck Corporation for the purchase of tokens and Valley Precision for metal drawer units for the cashier cages. Commissioner Sealock made a motion to approve the contracts. Commissioner May seconded the motion which passed unanimously. (See Order No. 94-87)

Chair Canella asked Mr. Hirsch to discuss the contracts from Deloitte and Touche and TransSierra Communications submitted by The President. The Deloitte and Touche contract is for auditing, tax and management advisory services; the TransSierra Communications contract is for surveillance equipment. Mr. Hirsch recommended approval of the contracts. Commissioner Whittenburg made a motion to approve both contracts which Commissioner May seconded. The motion passed unanimously. (See Order No. 94-88)

Mr. Hirsch then discussed the contract submitted by Catfish Bend Casinos. The contract was with GDC, Inc. for the purchase of

tokens. Mr. Hirsch recommended approval of the contract. Commissioner Van Horn made a motion to approve the contract. Commissioner Sealock seconded the motion which passed unanimously. (See Order No. 94-89)

The other two items under Catfish Bend Casinos are holdovers from the application process. The equity and debt structure presented with the application is different from the current structure, and the Commission was made aware of that at that meeting. The final debt equity structure in front of the Commission at this time involves an increased loan from the loan commitment approved previously, and would need to be approved as an amendment to the prior approval. Terry Hirsch recommended approval of the loan agreement with the Lee County Bank as amended.

Mr. Hirsch then covered the First Amendment to the Purchase Agreement. He understood that this only relates the time and payment to the boatyard. Mr. Hirsch recommended approval of the First Amendment to the Purchase Agreement which was anticipated with the restructuring of the debt.

Chair Canella called for a motion to approve or disapprove the final financial structure for Catfish Bend Casinos. Commissioner May made a motion to approve the contract with Lee County Bank and the final financial structure as amended. Commissioner Sealock seconded the motion which was passed unanimously. (See Order No. 94-90)

Commissioner May then made a motion to approve the First Amendment to the Purchase Contract. Commissioner Sealock seconded the motion which passed unanimously. (See Order No. 94-91)

Chair Canella moved to the next item on the agenda - a motion for a review of exclusivity on the Missouri River filed by The President Riverboat Casinos. Bill Wimmer, counsel for The President, presented The President's request. He stated there are two threshold questions which are: 1) can this Commission, as a matter of law, approve the agreement represented in Agenda Item 10 (Approval of Management and Boat Lease Agreement between Sioux City Riverboat Corporation and Argosy Gaming Corporation), or does Agenda Item 10 represent a new license for which an application process should have been gone through; and 2) did this Commission act within the confines of the law when it granted an exclusive arrangement on the Missouri River - does the exclusivity have a legal basis in order to exist? The President believes that if the Commission approves the arrangement as set out in Agenda Item 10 that a dangerous precedent will be set from a policy prospective. It sets a policy precedent far different from previous precedent, and contrary to what the Legislature intended. The President feels that Sioux City, through legal documents, is asking the Commission to approve a new boat, a new operator, and a new controlling party, through a transfer of license. They further feel the exclusivity

arrangement is void as it is contrary to Iowa law. Mr. Wimmer stated the only reason Argosy is before the Commission in the Management and Boat Lease Agreement instead of a license application is because of the exclusivity arrangement. The President feels that if the Commission approves the Argosy contract, they will be approving a new license without subjecting the licensee to the same standards that all other licensees have been subjected which is the criteria set forth in Administrative Rule 491-21.10.

Mr. Wimmer also discussed the exclusivity issue. It is The President Riverboat Casino - Carter Lake's position that the exclusivity resolution is illegal and void as it is contrary to Iowa law. He also stated that the Commission, by granting or extending exclusivity to Argosy, will be circumventing Administrative Rule 491-21.11. It is their position that the Commission can not not consider or delay an application for a period of time in order to uphold the exclusivity issue.

Chair Canella called for any comments or questions regarding Mr. Wimmers' presentation. Hearing none, Chair Canella turned the floor over to Ed Ellers, President of The President Riverboat Casinos. Mr. Ellers stated that The President wants the same process being applied in the western part of the state to be applied to the eastern side of the state. He further stated that the reasons for originally granting the exclusivity no longer exist. He requested the Commission take whatever time is necessary to maintain the integrity of gaming in Iowa when they consider the boat lease and management agreement, and the issuance of a license or licenses in Council Bluffs. Chair Canella called for any questions or comments regarding Mr. Ellers' presentation.

Chair Canella called on Sioux City to give their response to The President's motion. Bruce Crary, counsel for the Sioux City Riverboat Corporation, indicated it is their position that The President does not have any standing as they do not have a license application on file, they have not been prejudiced by the Commission, nor do they have the right to come before the Commission and raise the exclusivity issue. Mr. Crary stated that Sioux City is before the Commission to request the approval of a management agreement, until such time as ownership changes at which time they will file a license application with the Commission. Sioux City Riverboat Corporation feels the Commission has the authority to grant exclusivity, and that it remain in effect for the period of time for which it was originally granted. Mr. Crary turned the floor over to Arlene Curry, who prepared the response to The President's Motion. It is Sioux City's position that the issue is whether or not the Commission has broad enough discretionary powers to make a decision granting a period of time to protect a licensee from other market factors. Chair Canella called for any questions or comments regarding Ms. Curry's comments.

Commissioner May asked if they had the statistics available to show the percentage of customers on the Sioux City riverboat that are coming from the Council Bluffs/Omaha market, and what steps Sioux City has taken to market that area. It was determined that the figures requested were not able to be retrieved from the computer as stated at July's Commission meeting. Mr. Crary stated that it is Argosy's intent to heavily market the Council Bluffs/Omaha area. Carl Bolm, with the Sioux City Riverboat Corporation, and Joe Uram, Vice President, Chief Financial Officer and Treasurer of Argosy Gaming Company, addressed this issue. Commissioner May asked how Argosy had been able to make an informed decision regarding the percentage changes in the Management Agreement if exclusivity were not a factor and did not know what the impact of the exclusivity agreement was. Mr. Uram indicated that the profit percentages and gross revenue percentages were not set by a mathematical equation, but were reached through business negotiations.

John Mugan, attorney for the Missouri River Historical Development, indicated that they had joined the Sioux City Riverboat Corporation in their response to The President's Motion. He touched on the issues of exclusivity and payment of damages as presented by Mr. Eller.

After a short break, the Commission heard from several individuals who support the continuation of the exclusivity for Sioux City until January, 1996, as originally specified by the Commission.

Chair Canella asked Jeff Farrell, Assistant Attorney General for the Commission, if he had any comments. Mr. Farrell indicated that he felt there were some legal standards that should apply to the exclusivity issue; but had not had the opportunity to fully explore the legal arguments raised in The President's brief. Further, he had not had the opportunity to review or investigate claims made in Sioux City's response. He indicated that there were several issues raised which needed a more detailed review, and felt he could provide some research and legal opinions by the September Commission meeting.

Commissioner Sealock made a motion to continue the exclusivity issue until the September meeting. Commissioner May seconded the motion. The motion passed unanimously. (See Order No. 94-92)

Chair Canella asked Mr. Farrell to address the issue of the Management contract. He agrees there is some merit to The President's argument that the exclusivity issue and the management contract are intertwined and merits the same type of investigation as the questions surrounding the exclusivity issue. He recommended this matter be continued until proper research can be done.

Mr. Crary informed the Commission that Argosy and Sioux City Riverboat Company have done everything they can to have everything necessary in the Commission's hand, and they hoped the Commission

would be able to approve the Management and Lease Agreement as to form.

Commissioner May indicated to Mr. Crary that she recalled having a conversation with him shortly after she received her copy of the Management and Boat Lease Agreement and voiced her concern that the Management Contract appeared to substitute the Iowa Gaming Company for the licensee and that the Board of Directors of MRHD had abdicated its ability to operate the casino. There was additional conversation between Commissioner May and Mr. Crary concerning the Management and Boat Lease Agreement. Mr. Crary indicated they were willing to sit down and make whatever changes the Commission needed in order to be comfortable with approving the agreement.

Mr. Ketterer asked Steve Norton, President of Argosy, and Mr. Bolm, what they felt the operations in Sioux City would be like during the next 60 days <u>if</u> the proposed Management and Boat Lease Agreement were approved on this date. They indicated the boat would arrive the end of August, but would not be operational. The new manager would come in as of October 1st, and assume management with the start-up of the new boat in Sioux City.

Mr. Ketterer also asked what would happen with the Argosy/Gaming Development agreement should the Commission continue action on the Management and Boat Lease Agreement until the September meeting. Jeff Roberts, legal counsel, stated that if the earliest they could open if the Commission delayed action until the September meeting would be October 20th or the first of November. It is possible there could be a void in operations if the Agreement is not approved today; however, if the Agreement were approved, there would not be a void in operations.

There was continued discussion regarding the Management and Boat Lease Agreement. Chair Canella called on Commissioner Whittenburg who made a motion to approve as to form the Management and Boat Lease Agreement between the Sioux City Riverboat Corporation and Argosy Gaming Company, with the Commission retaining full jurisdiction and authority to rescind its approval if individuals connected with Argosy Gaming Company who are involved with the management and operation of the management and lease agreement and subject to passing background investigations fail those DCI investigations in the sole opinion and determination of the Commission at a later date.

Chair Canella asked Mr. Farrell for his opinion regarding the motion. Mr. Farrell stated that if the Commission voted on the Management and Boat Lease Agreement, it would be removed from the exclusivity issue on whether or not Argosy should be required to complete the entire application process.

Commissioner May indicated that she had a problem with Commissioner Whittenburg's motion in that she felt it set a precedent for the

Commission. She feels the Commission needs to be fully aware of what is occurring when they grant a management contract, that being in effect the licensee's obligation and privileges granted under the license. She stated that if the Commission is going to allow management contracts which usurp the power of the licensee, then there will be a problem in the future in maintaining the identities of licensees. She cited a couple of examples.

Mr. Ketterer stated that he did not think Argosy was attempting to sidestep the licensing process. He does not have a problem with the boat coming up or being leased until the issues of concern with control and management are resolved by whatever means.

There were several comments made by various people concerning the pros and cons of approving or disapproving the boat and management lease agreement.

Mr. Farrell indicated that the Commission should set forth a policy or adopt rules they want to follow when this situation arises in the future - the situation being what happens when a new group comes in and control of the operation or entity is passed to a new group. Is that when you want to re-license that entity, or allow the prior license to continue in the shell of the former company? He feels the Commission needs to decide that issue in regard to Argosy and then consistently apply that decision in the future.

Chair Canella indicated he wanted Argosy to be informed of the Commission's specific concerns regarding the management and boat lease agreement, let them correct them and then hold a telephonic Commission meeting.

Mr. Ketterer made the suggestion that representatives of Argosy meet with Mr. Farrell and himself next week to work out the areas of concern and then schedule a telephonic commission meeting. Commissioner Whittenburg asked if the purpose of the telephonic commission meeting would be to approve a revised management agreement.

Chair Canella stated that the motion made by Commissioner Whittenburg earlier had been withdrawn for lack of a second.

Chair Canella asked if there was any administrative business to come before the Commission. Mr. Ketterer informed the Commission that the deadline for Pottawattamie County applicants has been set for September 19, 1994. The staff is expecting as many as six applications to be received.

Chair Canella asked if there was any public comments. Mary Ellen Chamberlain of the Riverboat Development Authority which is the non-profit organization for The President Riverboat Casino, stated that the role of the non-profit has been somewhat dimmed and blurred. She expressed her concern about the protection of the

community and the non-profit groups. She further stated that Iowa is unique in that the non-profit groups are the license holders and have management contracts with the operators. She posed several questions which she felt the Commission needed to consider.

Chair Canella called for a motion to adjourn. Commissioner Sealock so moved, with Commissioner Van Horn seconding the motion. The meeting adjourned at 1:00 p.m.

MINUTES TAKEN BY JULIE HERRICK, CPS

IOWA RACING AND GAMING COMMISSION
TELEPHONIC MEETING
AUGUST 26, 1994

The Iowa Racing and Gaming Commission (IRGC) held a telephonic meeting on Friday, August 26, 1994, at the Commission's office in Des Moines, Iowa. Participating in the meeting were: Chair, Richard Canella; Vice-Chair, Rita Sealock; and Commissioners Lorraine May, Del Van Horn and Nancy Whittenburg; Commission staff Jack Ketterer, Administrator, Linda K. Vanderloo, Director of Racing and Administration; Terrence Hirsch, Director of Riverboat Gambling; Karyl Jones, Executive Officer; Jeff Farrell, Assistant Attorney General for the Commission; and Julie Herrick, Secretary.

Chair Canella called the meeting to order at 9:05 a.m.

Chair Canella called for a motion to approve the agenda. Commissioner Van Horn so moved, with Commissioner Whittenburg seconding the motion. The motion passed unanimously.

Chair Canella called on Mr. Ketterer to discuss the Sioux City Riverboat Corporation's request for approval of a Management and Boat Lease Agreement.

Mr. Ketterer explained that this meeting was being held as a result of a meeting between Commission staff, Sioux City Riverboat Corporation staff, and Argosy staff held on Tuesday, August 23, 1994, to resolve areas of concern to Commission members in the Management and Boat Lease Agreement.

There was a discussion as to why a management agreement was being pursued at this time when the agreement contemplates the eventual filing of a new application. They indicated that timing was one of the reasons. The parties also indicated that they preferred to focus on the changes in the agreement and not on the proposed partnership agreement or a new application.

A discussion was also held regarding the Commission's concerns relating to the control divesting from the licensee and the precedent that could set for other licensed entities.

Discussions were also held concerning the elements in Section K which indicated a lack of control over the license, which were changed, and issues pertaining to statutory language and intent toward this type of language. These issues will be addressed by Mr. Farrell later on in this meeting.

Mr. Ketterer stated that he had indicated to Argosy and the Sioux City Riverboat Corporation people that the Commission might be more favorable to approving the Management and Boat Lease Agreement if the deadline of April 1, 1996, for either forming the limited partnership or a new entity was moved forward to a 90-120 day range so that a new application could be filed at that time. Mr. Ketterer further indicated that the Commission might be more receptive to a short term approval to allow for the moving of the boat and provide continuous operations in the Sioux City location, and the filing of a new application at the end of the specified time.

Mr. Farrell stated that he had reviewed the statute to determine under what circumstances the Commission could approve a management contract which would turn over control of the gambling games or the operation of the riverboat to another entity. He informed the Commission that he was going to cover some public policy issues that he felt the Commission needed to consider in determining whether or not they would approve a management agreement with a third party.

First, he noted that under statute, the Legislature has created three different types of classes of licensees: 1) a qualified, tax-free organization created for the purpose of conducting gambling games; 2) a class created for the licensee operating the gambling boat; and 3) the occupational license for all of the employees working in the gambling operation or on the boat. He stated that it was the Legislature's intent that everyone that was going to work on a gambling boat or be in charge of the boat or gambling games be licensed under this chapter.

Mr. Farrell then moved to 99F.7(2)(a) which talks about management contracts which may be approved by the Commission. The first sentence of the section states "The applicant shall not by lease, contract, understanding or arrangement of any kind, grant, assign or turn over to any person the operation of an excursion gambling boat or the system of wagering described in Section 99F.9, which references the qualified sponsoring organization. This means that the licensed entity could not turn over the operation of gambling games or the operation of a riverboat to another entity. However, the second sentence states that this section does not prohibit a management contract approved by the Commission. This sentence gives the Commission authority to approve a management contract whereby one of those entities would allow a potential third party to operate the games or boat. Previously, the Commission has allowed the sponsoring organization to turn over the operation of gambling games to the entity licensed to operate the gambling boat, which is what was done with the original Missouri River Historical Development (MRHD) contract.

Mr. Farrell stated one of his concerns with the management agreement is that it turns over management of the gambling games to

a party that is not licensed. Under the statute which allows the qualified sponsoring organization to enter into a management agreement which allows another party to operate the gambling games, the same statute does not allow that party to enter into a management agreement with a third party for the operation of the gambling games. There is no contemplation of a holding party.

The public policy issues which Mr. Farrell felt the Commission needed to take into consideration when determining whether or not to approve the management agreement are as follows: 1) The Commission should maintain the accountability of every company or person who is involved in the operation of a riverboat; 2) the license to operate a gambling game or riverboat should not be transferred for a premium or allowing the sale of that license. Mr. Farrell stated that he views the management agreement as the transfer of the license for value which is contrary to public policy.

Bruce Crary, attorney for Sioux City Riverboat Corporation, indicated that he disagreed with Mr. Farrell's statements almost entirely. They do not view the management agreement as a sale of the license. Mr. Crary indicated that just about everything, short of licensing, has been done to investigate Argosy at this time. Argosy is not able to file for a license at this time, as they do not have any ownership interest in the boat. It is the intent that Argosy and Gaming Development will eventually enter into a ownership agreement, and come before the Commission requesting a new license.

Steve Norton, President of Argosy, spoke regarding the value that Sioux City was bringing to the management agreement. Sioux City River Corp. is bringing an ongoing business, the value of the license, and trained employees. It is also an ongoing business which has market value, and; therefore, less pre-opening business costs for the new boat.

Chair Canella asked Mr. Crary when they anticipated applying for a license. The contract specifies a date on or before April, 1996; however, if it becomes an issue, it may have to be fast-tracked. Chair Canella indicated that he had a problem with them waiting that long, and indicated his preference would be 90 days. Mr. Crary felt they could put together a license application in less than a year and half, but was not sure they could do it in 90 days. Chair Canella indicated the license could be conditional upon approval by the Security Exchange Commission.

Joe Uram, Chief Financial Officer of Argosy, indicated that Argosy would defer to any requests from the Commission in regard to the filing of a license application. He indicated Argosy was hesitant to agree to a specific date as Argosy would lose all of its negotiating leverage on business points with Gaming Development. Commissioner May stated that Mr. Uram's comments would be a reason

why Argosy would want the limited partnership agreement worked out prior to the boat arriving. Commissioner May indicated that there was not much left to be done in order to file the new license application. The earliest the Commission could address this license application would be January as there is not a December Commission meeting.

Mr. Ketterer reminded everyone that statutorily the Commission can not grant a license until 60 days after an application is received by the administrator; therefore, any management and lease agreement would have to continue during that 60-day time frame. There was a discussion to clarify the filing and timing of a new application and the date the Commission could act on that license application.

Mr. Crary indicated it was his understanding that if the application was on file so that it could be heard at the January meeting, that was probably the earliest they could hope for. Commissioner May indicated that when she looked at what needed to be done on the application, she feels that either a) the new boat would not be floating in October, or 2) they will have the work done by September 20th that would be necessary to complete the boat portion of an application. She wondered why an application could not be filed so that action could be taken at the November meeting.

Mr. Crary asked Commissioner May if what he was hearing was that the management agreement would be approved so that the management situation could take place and the boat could get on the move, they would file an application for a new license based on a new entity which would come into being upon the granting of the new license, with said application being on file in sufficient time to be heard at the November Commission meeting. It was determined that the new application would need to be filed by September 16, 1994, in order to be considered at the November meeting.

David Friedman, legal counsel for The President, asked to make a comment. He indicated that The President is sympathetic to the predicament in terms of timing; however, he feels they are in this position due to their own planning and attempt to circumvent the application rules. He is concerned about the precedent the Commission could be setting in allowing anyone to bring in a completely new boat and new operator which is not licensed in the state. He asked the Commission to consider the possible ramifications of allowing an unlicensed operator and what that could mean in terms of a potential violation of the regulations and statutes.

Commissioner May asked Mr. Farrell for his thoughts regarding Mr. Friedman's statement. Mr. Farrell indicated he was troubled by the Commission approving the management agreement, but he also understands that the Commission is granting approval upon the condition that an application is made within a three-week period and upon which the new entity will be licensed which would resolve

the accountability issues which he had discussed. He is also uncomfortable with the management agreement and being licensed. He indicated if the Commission intended to approve the agreement, they needed to make clear the circumstances surrounding the transaction and state that an application, not management agreements, will be required in the future.

Commissioner May asked Mr. Norton when he contemplated the management contract taking effect. He indicated it would be the date they start operation which they contemplate being the first of October. Commissioner May indicated that the Commission could approve the management and boat lease agreement for a 45-day time frame (October 1, 1994 through November 17, 1994) by which time the new application should be on file prior to the management and boat lease agreement taking effect.

Mr. Farrell suggested that the Commission consider adopting rules to set forth what its policy is going to be in the future.

Mr. Crary indicated that Sioux City had done a tremendous amount of research in order to respond to The President's claims in the exclusivity issue, and the word "discretion" is used liberally for this Commission as well as other Commissions. Commissioner May stated that the problem is that the use of discretion leads to the setting of a precedent to be used next time, and could lead to questions as to whether or not the Commission is acting reasonably.

Commissioner May went on to say that if Argosy or the new entity has a full license application on file in the Commission by September 16, 1994, which could then be ruled upon by the Commission at the November 17th meeting, then the Management and Boat Lease Agreement could be approved for the limited term of October 1, 1994 through November 17, 1994.

Mr. Ketterer indicated that given those conditions, the fact that there is an application pending, the fact that a limited time frame is involved, the concerns the Commission have with the agreement and control; however, the benefits of the economic development and continuous operation in Sioux City outweigh the risks of the control problem with an application on file contemplating a new license. Mr. Ketterer wondered if the agreement should not be good through November 21st in case there should be weather-related problems with the Commission meeting.

Commissioner May also felt the record should reflect one of the reasons the Commission was willing to proceed under these unusual circumstances is due to the fact that the background information relating to Argosy is already on file, and has been for some time.

Commissioner Whittenburg asked Commissioner May if she was moving to approve the amended Management and Lease Agreement between Sioux City Riverboat Corp. and Argosy Gaming Corp. for a period between

October 1, 1994 and November 21, 1994, on the condition that these two parties, namely Sioux City Riverboat Corp. and Argosy Gaming, file a full application for licensure with the Iowa Racing and Gaming Commission for licensure of a new licensing entity formed between and by them, and that application to be on file by September 16, 1994, for action at the November 17, 1994 meeting of the Iowa Racing and Gaming Commission. Commissioner May indicated she would second the motion.

Mr. Friedman asked if the motion passed, and a new entity was formed and a new licensed granted, whether the existing license would be turned into the Commission simultaneously. Mr. Farrell indicated that would be correct.

Chair Canella asked for any further discussion concerning the motion. Hearing none, Chair Canella called for a roll call vote with all voting Aye. (See Order No. 94-93)

Chair Canella stated that as there was no further business to come before the Commission, he would entertain a motion for adjournment. Commissioner Sealock so moved, with Commissioner May seconding the motion. The motion passed unanimously. The meeting was adjourned at 10:05 am.

MINUTES TAKEN BY JULIE HERRICK, CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
SEPTEMBER 15, 1994

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, September 15, 1994, in the Auditorium of the Wallace State Office Building, Des Moines, Iowa. Commissioners present were: Chair, Richard Canella, Vice-Chair, Rita Sealock, and members Lorraine May, Del Van Horn and Nancy Whittenburg.

Chair Canella called the meeting to order at 8:30 am, and entertained a motion to approve the agenda. Chair Canella called on Mr. Ketterer for an amendment to the agenda. Mr. Ketterer explained that under the Contract Approval section, Item No. 10 on the agenda, an item regarding the transfer or assignment of a lease on the Mississippi Belle II from Roberts River Rides as Lessor to Houma Shipyard as Lessor for a period of thirty days or less to fill the gap between the time the new boat that is going to Clinton leaves the shipyard and the time that the Mississippi Belle II arrives in Ft. Madison, and the closing is executed on that boat was being added to the agenda. Chair Canella called for a motion to approve the agenda as amended. Commissioner May made a motion to approve the agenda as amended, with Commissioner Sealock seconding the motion. The motion carried unanimously.

Chair Canella called for a motion to move into Executive Session for the purpose of background checks with the Division of Criminal Investigation (DCI). Commissioner Whittenburg so moved, with Commissioner Van Horn seconding the motion. The motion carried unanimously.

Following Executive Session, Chair Canella called for a motion to approve the Commission meeting minutes of August 19, 1994, and the telephonic Commission meeting minutes from August 26, 1994. Commissioner Sealock so moved, with Commissioner Whittenburg seconding the motion. The motion carried unanimously.

Chair Canella called on Tom Timmons, General Manager of Prairie Meadows, to discuss their request for race dates of Wednesday, April 19 through August 27, 1995. They will run a mixed (Thoroughbred and Quarter Horse) season, with a four-day race week except for Monday holidays.

There was a brief discussion regarding the relationship between Racing Association of Central Iowa (RACI) and the Polk County Board

of Supervisors, and who is actually in control of the license. It was pointed out that the changes in the Operating Agreement could possibly warrant a new license application for Prairie Meadows in which case slots could not be installed at Prairie Meadows as a new license holder would not meet the statute requirement of being a license holder as of January 1, 1994.

Chair Canella requested RACI to appear before the Commission at the October meeting to discuss the new Operating Agreement with the Commission, and assure the Commission that they are still in control of the license.

Chair Canella called for a motion to defer any action on the requested racing dates. Commissioner May indicated that the license renewal should also be deferred. Commissioner May moved that approval of the license renewal and racing dates be deferred until the October meeting, with Commissioner Sealock seconding the motion. Hearing no further discussion on the issue, Chair Canella called for a roll call vote. The motion carried unanimously. (See Order No. 94-94)

Chair Canella called on Bruce Wentworth, General Manager of Dubuque Racing Association, Ltd., to discuss their request to simulcast the races from the Gulf Greyhound Park in LaMarque, Texas. They will continue to simulcast Bluff's Run as well. Commissioner Whittenburg made a motion to approve Dubuque Greyhound Park's request to simulcast the signal from Gulf Greyhound Park in LaMarque, Texas. Commissioner Van Horn seconded the motion which passed unanimously. (See Order No. 94-95)

Chair Canella called on Augie Masciotra, General Manager of the Waterloo Greyhound Park, to discuss their license renewal application and live racing season dates. The entire season is subject to the passage of the referendum on September 27, 1994, and all kennels, contract holders, etc., have been advised of this fact, which should give everyone adequate notice. Mr. Masciotra discussed various points in the license renewal application. Linda K. Vanderloo, Director of Racing/Administration, recommended approval of all areas of the season requests for 1994-95. Chair Canella called for any further discussion. Hearing none, he called for a motion. Commissioner May made a motion to approve the season and license renewal application, with Commissioner Sealock seconding the motion. The motion passed unanimously. (See Order No. 94-96)

Chair Canella called on Linda K. Vanderloo to present the following contracts from Waterloo Greyhound Park:

- AIM, Inc. dba Bluffs Run - Simulcasting Contract
- Prairie Construction Co., Inc. - Snow Removal - Handled separately from the other contracts as it is a related party contract

- Pepsi-Cola Company - Soft Drink Sales Contract
- United Tote Company - Totalizator System
- Sportview Television, Inc. - Closed circuit TV, additional Daily Performances
- Eye In The Sky, Inc. - Photo Finish Contract
- Greyhound Equipment Company, Inc. - Lure Rental Agreement

Ms. Vanderloo recommended approval of all of the above contracts. She indicated there were contracts which were not submitted, and were being withheld until the outcome of the referendum was determined. Chair Canella called for a motion regarding the above contracts. Commissioner Sealock made a motion to approve the contracts except for Prairie Construction Co., with Commissioner Whittenburg seconding the motion. The motion carried unanimously. (See Order No. 94-97)

Chair Canella addressed the Prairie Construction Co. contract. The Commission has stated its preference for bids to be submitted on related party contracts, and requested that Augie Masciotra submit copies of the bids for the Commission's review prior to any action being taken on this contract.

Chair Canella called on Walt Pyper, General Manager of Bluffs Run, who gave the Commission a preview of the casino plans. The target date for completion is February 1, 1995. They are building a new area consisting of 30,000 square feet which will be used as the casino area. Renovation of existing facilities began on September 1st. There is a possibility they may need to move the down time from December to early November. He requested discretion to be able to do that, and would like to be able to provide four weeks notice to Bluffs Run employees, state employees, and tracks receiving their simulcast signal. Chair Canella indicated that was satisfactory, that he should keep Jack Ketterer advised of the dates and time frame. They expect to submit their final license application to the Commission in October or November.

Commissioner Van Horn inquired if they had any concern about the possibility of a riverboat in Council Bluffs. Mr. Pyper indicated they did not, and that more than likely, Iowa West Racing Association would be the non-profit organization for several of the boat applicants. They are very optimistic that they can compete with the riverboat.

Chair Canella asked about their plans for Bingo. Mr. Pyper indicated that nothing has been said publicly about having bingo. If they do have bingo, it will be operated on a non-profit basis, and will allow existing charities to operate and receive all of the proceeds.

Chair Canella called on Jack Ketterer to explain the admission fees submitted to the Commission. These admission fees reflect the addition of Catfish Bend Riverboat Casino in Ft. Madison and

Burlington, which will begin operations next month. The admission fees would be $4,250.00 per week. Mr. Ketterer recommended approval of the admission fees. Hearing no further comments, Chair Canella called for a motion. Commissioner Sealock made a motion to approve the revised admission fees, with Commissioner Van Horn seconding the motion. The motion passed unanimously. (See Order No. 94-98)

Jack Ketterer then addressed the policy which the IRGC office staff would like to adopt regarding admission fees. The IRGC office staff is requesting permission to establish weekly admission fees for the next fiscal year in June of each year. This fee would remain in effect until May of each fiscal year at which time the IRGC staff would determine the actual cost to date for the regulation of each riverboat, and the appropriate adjustments made accordingly. Mr. Ketterer requested the Commission to approve this manner of establishing admission fees. There were no comments made by any of the boat operators. Commissioner May made a motion to adopt the proposed Commission Policy for Establishing Admission Fees, with Commissioner Whittenburg seconding the motion. The motion carried unanimously. (See Order No. 94-99)

The Commission took a five minute recess.

Chair Canella brought up the next agenda item - Motion for Review of Exclusivity on the Missouri River. William Wimmer, representing The President Riverboat Casinos, Inc., requested that the matter be continued. The license to which exclusivity was granted is going to be surrendered, and the issue is moot at this point in time. They asked that it be continued until some point in the future. No motion needed.

Chair Canella called on Terry Hirsch to present the following contracts submitted by the Mississippi Belle II:

- May Electric - $60,000.00
- Casino Signs - $230,000.00 for signage
- Sprung Instant Structures, Inc. - $168,000 for customer service and customer walkway enclosures

Mr. Hirsch recommended approval of these contracts. Commissioner May made a motion to approve the contracts with May Electric, Casino Signs, Inc. and Sprung Instant Structures, Inc. Commissioner Van Horn seconded the motion which passed unanimously. (See Order No. 94-100)

Terry Hirsch discussed the fourth contract which deals with the assignment of the lease on the current boat in preparation for the switch of boats in Clinton. Ken Bonnet, President of Mississippi Belle II, stated they are requesting termination of the existing lease between Roberts River Rides and Mississippi Belle II to coincide with a contract between Roberts River Rides and Houma

Fabricators regarding the timing of the boats. The current boat will be traded in to Houma Fabricators as part of the closing on the new boat which will take place prior to the new boat leaving the shipyard. This means the existing boat will be owned by Houma for a short period of time. When the new boat arrives in Clinton, the short term lease will be terminated and a new lease will be negotiated between Roberts River Rides and Mississippi Belle II. Chair Canella called for a motion. Commissioner Van Horn made a recommendation to approve this contract. Commissioner Sealock seconded the motion which passed unanimously. (See Order No. 94-101)

Chair Canella requested an update on Catfish Bend Riverboat Casinos. Dan Kehl, interim general manager of Catfish Bend, indicated that all of the key people are in place. The barge is in place and utilities are being installed. A lease arrangement is being negotiated for Burlington.

The next item on the agenda was the Marquette Gaming Corp./Miss Marquette license application. Randy Lenth, Executive Director of the Marquette Gaming Corporation, provided background information on the Marquette Gaming Corporation, the land base and boat, and requested approval of the license application. Several questions were posed by Commission members and answered by Mr. Lenth and John Parker, President of Gamblers Supply. No action was taken regarding approval of the license application at this time as they have not received all of the required permit approvals.

The final item on the agenda for discussion is a request from The President Riverboat Casinos for Commission approval of two new games - "Caribbean Stud Poker" and "21 Super Bucks". Both games are played on a blackjack-type table. If the Commission approves these games, they will be allowed on all riverboats. Representatives of Mikhon Gaming from Las Vegas, which distributes the games, were present to answer questions. Terry Hirsch recommended approval of the games as "table games of chance" which means they will not be allowed at racetrack casinos, and staff requirements for the accounting and reporting of gaming revenue, game procedures, and table surveillance. Commissioner Van Horn made a motion to approve the games as "table games of chance", and subject to staff requirements. Commissioner Sealock seconded the motion, which passed unanimously.

As there were no public comments, Commissioner Van Horn made a motion to adjourn which was seconded by Commissioner May. The meeting adjourned at 11:35 am.

MINUTES TAKEN BY JULIE HERRICK, CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
OCTOBER 13, 1994

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, October 13, 1994, in the Dial Room of the Best Western Iowan, Fort Madison, Iowa. Commissioners present were: Chair, Richard Canella,, Vice-Chair, Rita Sealock, and members Lorraine May, Del Van Horn, and Nancy Whittenburg.

Chair Canella called the meeting to order at 8:30 am, and entertained a motion to approve the agenda. Commissioner Van Horn so moved, with Commissioner May seconding the motion. The motion carried unanimously.

Chair Canella called for a motion to move into Executive Session for the purpose of background checks with the Division of Criminal Investigation (DCI). Commissioner Whittenburg so moved, with Commissioner May seconding the motion. The motion carried unanimously.

Following the conclusion of the Executive Session, Chair Canella called for a motion to approve the minutes from the September 15, 1994, Commission meeting. Commissioner Whittenburg moved to approve the minutes as submitted, and Commissioner Van Horn provided the second. The motion carried unanimously.

Scott Prebler, representing the mayor of Ft. Madison, gave a brief statement welcoming the Racing and Gaming Commission to Ft. Madison. Gene Enke, President of Southeast Iowa Regional Riverboat Commission (SIRRC), also gave a brief statement welcoming the Commission back to southeast Iowa.

Chair Canella made a few comments on behalf of the Iowa Racing and Gaming Commission regarding the importance of the licensing process, and the length of time it is taking for a license to be granted. He stated that any expenses incurred by an applicant prior to the granting of a license is at the applicant's own risk, and that the Commission has not and will not make any commitment to an applicant.

He also made a few comments regarding the Commission's feelings regarding the non-profit corporations. When legislation was passed allowing racing and gaming in Iowa, the Legislature required that there be a non-profit corporation. In racing, the non-profit corporation holds the license and operates the track. They are allowed to have management contracts and operator's contracts, if necessary, however; it is the Commission's position that the non-profit corporation is extremely important to the integrity of racing and gaming in the State of Iowa. It must be the dominant entity at any location which has gambling. The license should <u>never</u> be transferred, sold or assigned, either

directly or indirectly. The Commission will insist that any agreement between a non-profit corporation and another party must permit the non-profit corporation which holds the license to be an independent entity and make independent decisions. In the case of riverboats, the non-profit entity has to sponsor an operator, and they are co-licensees. The non-profit entity is the first line of defense in protecting the integrity of gaming in the State of Iowa.

Chair Canella moved to the next item on the agenda - the National Cattle Congress and Waterloo Greyhound Park. Mr. Canella called on Augie Masciotra, the interim general manager, who indicated that he had been asked by the Board of Directors of the National Cattle Congress to inform the Commission that it was not their intention to surrender their license at this time. There were developments on Friday, October 7th, which would allow the Board to look at this issue in other directions. It is their intention to pursue a live racing season for 1994-95. Casino Magic has guaranteed the necessary funds to allow the live racing season to be run in its entirety.

Chair Canella informed Mr. Masciotra that the material he was presenting to the Commission relating to the license held by the National Cattle Congress was not an agenda item. He suggested that the item be deferred and another meeting scheduled in the near future regarding this item so all interested parties could be timely noticed.

Commissioner May indicated that she had discussed this issue with Jeff Farrell, Assistant Attorney General for the Commission, and the agenda does not allow for a discussion or determination of future race dates or the continuation of the license.

Jay Nardini, the official spokesperson for the group "Citizens Voting No on May 17th, and now September 27th, addressed the Commission regarding the divisive nature of this issue. He indicated that what may be in the best interests of Waterloo Greyhound Park is not necessarily in the best interests of Black Hawk County. He requested that the Commission revoke the license of the National Cattle Congress as it is no longer a financially viable corporation and has lost its control as a non-profit corporation to run the entire business.

Chair Canella indicated that the meeting on this issue would be held no later than the first week of November in Des Moines. He informed Mr. Masciotra that the Commission would be requesting specific information from the National Cattle Congress.

Bob Loeber, speaking on behalf of several kennel operators from Waterloo, indicated that if the meeting were not held until November, there would not be sufficient time to place the dogs at another track, particularly if Waterloo is not going to open. He requested that the meeting be scheduled as soon as possible.

Chair Canella called on Terrence Hirsch, Director of Riverboat Gambling, to discuss the final adoption of the rule defining "video machine" for the purpose of determining what gaming devices

would be allowed at racetrack enclosures. This rule excludes any game which requires the player to make a decision prior to the outcome of the game. It also prohibits any device that would pay out in a paper ticket form. Commissioner May moved to final adopt the rule defining "video machines". Commissioner Whittenburg seconded the motion which passed unanimously. (See Order No. 94-102)

Chair Canella explained that this definition would prohibit video poker and video blackjack at the tracks. He also stated that the Commission has requested clarification from the Legislature on this issue.

Chair Canella called on Mr. Hirsch to discuss the contract with Newt Marine submitted by the Mississippi Belle II for approval. Mr. Hirsch explained that the contract was for dredging and installation of mooring clusters at the docking site for the new vessel. Commissioner Van Horn made a motion to approve the contract based on staff recommendation, and Commissioner May seconded the motion. The motion carried unanimously. (See Order 94-103)

Chair Canella asked Mr. Hirsch to address the next item agenda - The Riverboat Development Authority/The Connelly Group, L.P. Mr. Hirsch explained they had submitted two contracts for approval by the Commission. The first contract deals with the traffic pattern of the patrons. The boating facility has some amenities that the boat doesn't, so there is a lot of traffic between the boat and the boating facility. The turnstiles for counting admissions are currently located at the boarding area of the boat, and they are requesting that the turnstiles be moved to the front doors of the guest services pavilion which will end the double counting of patrons. The agreements with the non-profit corporation and the city of Davenport attempt to establish a base level so that neither organization will be harmed by the new method of accounting for patron's admissions. There is also another agreement regarding the dock site which will benefit the city. They have adjusted the base boarding level to 1.2 million, and if it exceeds that figure, additional payments will be made. The non-profit contract is an extension of time. They are currently operating under a one year contract, and this contract takes it up to 1998. Hearing no additional comments, Chair Canella called for a motion. Commissioner Sealock made a motion to approve the Amendment to Operator's Contract and Third Amendment to the Davenport-Connelly Development Agreement. Commissioner Whittenburg seconded the motion which carried unanimously. (See Order No. 94-104)

Chair Canella asked Mr. Hirsch to cover the following contracts submitted by The President Riverboat Casinos:

- Custom Ship Interiors for labor, materials, equipment and supervision for specified interior refurbishment of The President;
- Inlander-Steindler Paper Company for paper products, plastic cups;
- George C. Matteson, Inc. for playing cards;
- Sun Data, Inc. to lease an AS 400 computer and miscellaneous computer equipment; and

- Uniform Ideas, Inc. for apparel for the uniform program.

Commissioner Van Horn made a motion to approve the above contracts based on staff recommendation. Commissioner Whittenburg seconded the motion which passed unanimously. (See Order 94-105)

Chair Canella requested that Mr. Hirsch address the following contracts submitted by Catfish Bend Casinos:

- Fleck Sales Co. for beer;
- Glasgow, Ltd. for uniforms;
- Golden Eagle Distributing Co. for beer;
- Hohnecker, Inc. for restaurant and bar supplies;
- J. P. Food Service, Inc. for institutional food and supplies;
- L.T.D. Distributing for beer;
- Pepsi-Cola Memphis Bottling Co. for beverages;
- Quality Wine Co. for wine;
- Quicker Liquor Store for liquor;
- Thoms Proestler Co. for institutional food and supplies;
- Watson Distributing Co. for beer; and
- Vance Insurance for marine insurance.

Commissioner Sealock made a motion to approve the above contracts relating to Catfish Bend Casinos which Commissioner Van Horn seconded. The motion carried unanimously. (See Order 94-106)

Mr. Hirsch then addressed the following agreements and/or leases which were submitted by Catfish Bend Casinos:

- Revised lease agreement with the City of Burlington;
- Addendum to Southeast Iowa Gaming Boat River Development License and Operator's Contract amending the contract with SIRRC indicating that the boat will be in place by November 1st;
- Agreement between the City of Ft. Madison, Parks, Recreation and Dock Board of the City of Ft. Madison, and Catfish Bend Casinos, L.C.; and
- Agreement between Mississippi Freighthouse Corp., d/b/a Big Muddy's and Catfish Bend Casinos as an alternative docking site for the boat in Burlington.

Dan Kehl, general manager for Catfish Bend Casinos, gave a brief update. He indicated that the shipyard hopes to perform sea trials next week, and that the boat will leave the shipyard by October

24th. During the board meeting Southeast Iowa Regional Riverboat Commission (SIRRC), he is going to request that the November 1st date be moved back to November 30th.

Mr. Hirsch stated that the agreement with Big Muddy's includes a provision for providing food service operations on the boat. Hearing no additional comments, Chair Canella called for a motion to approve the agreements and leases. Commissioner Van Horn so moved based on staff recommendation, and Commissioner Whittenburg seconded the motion. The motion passed unanimously. (See Order 94-107)

At Chair Canella's request, Mr. Hirsch then presented the winter dockside schedules for the various riverboats. They are as follows:

- The President Riverboat Casino - Open 8:00 am to 2:00 am Monday through Thursday, open 24-hours Friday and Saturday, and closing at 2:00 am Sunday. They also requested 24-hour operations for Thanksgiving Day and New Year's Day. They requested permission to close at 11:00 pm on Christmas Eve, and reopen at 3:00 pm Christmas Day. For M. L. King Day and President's Day, they have requested permission to close at 2:00 am.

- Belle of Sioux City - Open 8:00 am to 4:00 am Sunday through Thursday, and 8:00 am through 6:00 am Friday and Saturday. They will continue their current cruise schedule through October 31, 1994.

- Mississippi Belle II - Open at 9:00 am through 2:00 am Sunday through Wednesday, and will remain open until 3:00 am Thursday through Saturday, with the following exceptions: open 24-hours over the Thanksgiving weekend; closing at 5:00 pm on Christmas Eve and opening at 1:00 pm on Christmas Day; closing at 4:00 am December 26th through the 30th; and operating 24-hours on New Year's Eve.

- Dubuque Diamond Jo - Open 9:00 am through 2:00 am Sunday through Thursday, with a 24-hour operation on Friday and Saturday. Also requested a 24-hour schedule for Thursday, November 24, 1994.

- Catfish Bend Casinos - Schedule was approved last month; however at that time, it was anticipated that the boat would be in Burlington by November 1st. Their request at this time requests permission to stay in Ft. Madison until November 20th, and cruise to Burlington on November 21st.

Upon a recommendation from Mr. Hirsch, Commissioner Sealock recommended approval of the winter dockside schedules. Commissioner May questioned the dockside season as stated in Catfish Bend Casinos letter. The dockside season will end on April 1, 1995, not April 30, 1995. Commissioner Whittenburg seconded the motion which carried unanimously. (See Order 94-108)

Chair Canella then addressed the issue of Prairie Meadows and the Racing Association of Central Iowa (RACI). The Commission did not renew the license at the September meeting pending assurances from RACI that they would retain control of the license, not Polk County. He called on Commissioner May who has been coordinating the efforts on this issue. She indicated that the final Operating Agreements are not available at this time as all of the issues have not been resolved between the two entities. Without the Operating Agreements, the Commission can not act on the renewal of the license or approval of race dates. Chair Canella stated that when the documents did become available, they should be provided to the Commissioners well in advance of the next meeting, not the evening prior to the meeting. Commissioner May recommended deferral of this agenda item until the special meeting provided the necessary documents are ready, and the Commissioners have had sufficient time to review them. Commissioner Sealock seconded the motion, which passed unanimously. If the necessary documents are not ready in time for the special meeting, this will be an agenda item on the regular Commission meeting agenda for November. (See Order 94-109)

The Commission took a short break.

Chair Canella reconvened the meeting. He stated that the meeting for Waterloo agenda item will be held on November 4th in Des Moines. The Commission is required to give a 5-day notice to all interested parties as to when and where the meeting will be held. He also stated that the agenda will include the Racing Association of Central Iowa as an agenda item if they have provided the Commission with the necessary documents.

Chair Canella called on Mr. Hirsch to address the next agenda item - the license application of the Marquette Gaming Corporation and Miss Marquette. Mr. Hirsch asked Randy Lenth, Executive Director of the Marquette Gaming Corporation, and Jim Garrett, Marquette City Attorney, to come forward and address any questions the Commission may have. Mr. Lenth requested that the application be approved. Chair Canella asked if Mr. Parker and Mr. Nix, the principals of Gamblers Supply, Inc. were present. Commissioner Whittenburg inquired as to the makeup of the non-profit board, and indicated that the Commission would feel more comfortable if the Board had a broader base and diversification. She requested they contemplate expanding the board prior to the Commission approving the application.

Commissioner May inquired whether they now had a place of business, and the status of the filing with the IRS to be registered as a non-profit corporation. Mr. Garrett stated the earliest date for the filing of that application is fifteen months after the creation of the non-profit corporation.

Chair Canella asked if the non-profit corporation was active, had regular meetings, with minutes prepared of those meetings. Mr. Lenth indicated that the corporation met at least once a month. Commissioner May asked Mr. Lenth a few questions regarding the terms of the commission members, and how members are appointed to the board.

Commissioner Whittenburg returned to the issue of expanding the non-profit board, and also suggested that they might want to look at transferring the authority and power to appoint future board members to the board itself. It was suggested that additional board members could be from outside of Marquette. Commissioner Whittenburg stated the Commission was only attempting to make them a stronger board.

There was a brief discussion regarding the issue of security/law enforcement. Marquette has 28E agreements with the Clayton County Sheriff's Department, Crawford Co. Wisconsin Sheriff's Department and Prairie Du Chien Police Department, which allows the City of Marquette to call on these departments in case of an emergency. All of these departments are within one mile of Marquette. Special Agent Brosnahan of the Division of Criminal Investigation indicated that he was satisfied that any situations that might arise could be adequately handled. He also indicated that the boat does have a self-contained detention area.

Chair Canella informed Mr. Lenth that there would be a significant time frame between the time the license was approved and when the boat could open due to recruiting staff. The hiring of staff in that area could take 30-60 days, depending on the availability of the work force.

There was a short discussion regarding disbursement of the profits received from the boat. Mr. Lenth handed out a list of possible organizations to receive some of the funds.

Mr. Hirsch requested that John Parker, President of Gamblers Supply, and John Nix come forward at this time to address additional questions from the Commission. Their attorney, William Taylor, from South Dakota came forward to discuss the South Dakota lawsuits which are pending against Mr. Nix and Mr. Parker.

Commissioner May asked how the Marquette boat would affect the other boats in the state. Mr. Parker indicated that all of the boats in the state have some overlapping competition.

Commissioner May made a motion to defer the decision on the granting of the Miss Marquette license until the November 4th meeting, but no later than the November 18th meeting. Commissioner Sealock seconded the motion which passed unanimously. (See Order 94-110)

The following people addressed the Commission during Public Comment:

- Gene Enke, President of SIRRC, addressed the Commission regarding their concerns about a possible riverboat in Keokuk, Iowa. He presented a letter to the Commission regarding SIRRC's position.

- Paul Stanfield, of Citizens for Gambling-Free Government, thanked the Commission for the attention they are giving the non-profit corporations in the licensing process. He addressed

the issue of compulsive gambling. There was a brief discussion regarding the Gamblers Assistance Program.

- Mary Ellen Chamberlin, President of the Riverboat Development Authority in Davenport, Iowa, thanked the Commission for reaffirming the role of the non-profit corporation in maintaining the integrity of gaming in Iowa.

Chair Canella called on Linda K. Vanderloo, Director of Racing/Administration, to discuss the Unclaimed Winnings issue regarding Prairie Meadows and Bluffs Run. Ms. Vanderloo explained that in Fiscal Year 1994 the unclaimed winnings did not cover the Department of Agriculture and Land Stewardship's appropriation which administers 99D and pays the cost of drug testing at the various tracks. According to current rules, the tracks must reimburse on a per sample basis any testing and analysis that the unclaimed winnings do not cover. Unclaimed winnings were sufficient at Waterloo Greyhound Park, but not at the other tracks. Attorneys for Bluffs Run and Prairie Meadows have indicated that money would be forthcoming under protest. Since the agenda went out, the funds have been received.

Chair Canella called on Mr. Farrell to present the appeal hearing regarding Jeffrey T. Rutland on a decision by the Board of Stewards at Prairie Meadows on July 16, 1994 during the Iowa Breeders Futurity Race, and affirmation of that decision by the Administrative Law Judge. Mr. Rutland was not present; however, his attorney did present a written brief on his behalf. This is a large scale race with a purse of approximately $35,000.00, with the winner of the race receiving 40%. The difference between first and second place, which is the issue here, is $7,000.00. During the race, the No. 5 and No. 6 horses were ahead of the pack, bumped near the finish line, throwing the No. 6 horse off and the No. 5 horse, Mr. Rutland's horse, then finished in first place. The Stewards made a judgement call, after reviewing the tapes numerous times. They determined that the No. 5 horse interfered with the No. 6 horse, and that the No. 6 horse would have had a possibility of winning the race. They then decided to disqualify the No. 5 horse by changing the order of the finish, moving Mr. Rutland's horse to second place, and placing the No. 6 horse in first place. Mr. Farrell showed the video tape of the race to the Commissioners which shows a side view and head-on view of the race. Mr. Farrell did point out to the Commissioners that the No. 5 horse and No. 6 horse did not start the race side by side.

Mr. Farrell indicated that Mr. Rutland presented a good case to the Administrative Law Judge, and made some good points in his brief; however, he feels the Commission needs to allow the Stewards to have a zone of discretion to make these types of judgement calls. The Stewards are hired to make these types of decisions, they view every race, they have an understanding of where the cameras are and the different aspects of each race. The Stewards participating in the administrative hearing before the Administrative Law Judge have been at Prairie Meadows for five years, as well as a number of years in the horse racing industry. Mr. Farrell reiterated that he feels this is the type of decision which

the stewards should be allowed to make unless it is so clearly erroneous that the Commission would have no choice but to overrule their decision.

Chair Canella asked Terry Allen, one of the stewards at Prairie Meadows, if additional action had been taken against the jockey. Mr. Allen indicated that once the race has been made official, the stewards review the tape of the race to determine whether or not there was anything the jockey could have done to prevent the incident from occurring. In this case, the stewards felt the horse was drifting out of its lane during the entire race, which does not create a problem unless it interferes with another horse. Further, this horse did cross in front of another horse, but did not interfere with that horse.

Commissioner May made a motion to deny the appeal. Commissioner Sealock seconded the motion which passed unanimously. (See Order 94-111)

Commissioner Van Horn made a motion to adjourn the meeting, with Commissioner Sealock seconding the motion. The meeting was adjourned at 12:40 pm.

MINUTES TAKEN BY JULIE D. HERRICK, CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
NOVEMBER 4, 1994

The Iowa Racing and Gaming Commission (IRGC) met on Friday, November 4, 1994, in the Auditorium of the Wallace State Office Building, Des Moines, Iowa. Commissioners present were Chair, Richard Canella, Vice-Chair, Rita Sealock, and members Lorraine May and Nancy Whittenburg.

Chair Canella called the meeting to order at 9:00 a.m. Chair Canella stated that as a public meeting, anyone wishing to speak regarding any of the agenda items could, but they should sign the Public Comment sheet available on the table in the back of the room. He further stated that if there was a group, he would like them to choose someone from the group as a representative.

Chair Canella entertained a motion to approve the agenda. Commissioner Whittenburg made a motion to approve the agenda, and Commissioner Sealock seconded the motion. The motion carried unanimously.

Chair Canella moved to the next item on the agenda which was the approval of the minutes from the October 13, 1994 Commission meeting held in Ft. Madison, Iowa. Commissioner May made a motion to approve the minutes as submitted. Commissioner Sealock seconded the motion, which carried unanimously.

The next item for discussion was the Marquette Gaming Corp./Miss Marquette gaming license. Terrence Hirsch, Director of Riverboat Gambling, called Randy Lenth, Director of the Marquette Gaming Corp., to address issues raised at the October meeting. He indicated the non-profit board now consists of nine members. Some of the changes made to the By-Laws of the Marquette Gaming Corp. include removing the Marquette City Council from any control or most of the control. They can still appoint some of the members; however, they no longer have the power to remove them from the Board. Commission members stated they felt the Board was much more representative of Clayton County.

John Parker and John Nix, partners in Gamblers Supply Management Co., came forward to answer additional questions from the Commission. Mr. Parker gave the Commission an update on the construction progress. He indicated they hope to move the boat within the next week or so from McGregor to Marquette.

Commissioner May asked Mr. Parker to comment on the impact the Miss Marquette may have on the Dubuque Diamond Jo in response to a letter of protest regarding the issuance of a license in Marquette. Mr. Parker stated the market area for the Miss Marquette is mainly southeast Minnesota, southwest Wisconsin, and the northeast corner of Iowa. Chair Canella asked for a staff recommendation. Mr. Hirsch recommended approval of the license for a term which would end on March 31, 1997, so that it would be in sync with all other riverboat licenses. The license would also be contingent upon the completion of the background investigations. Chair Canella called for a motion. Commissioner May made a motion to approve the license in Marquette for the time period commencing now through March 31, 1997, contingent upon the completion of background investigations. Commissioner Sealock seconded the motion which carried unanimously. (See Order No. 94-112)

Chair Canella moved to the next item on the agenda which was the Racing Association of Central Iowa (RACI) and Prairie Meadows for the approval of the 1994 Operating Agreement and license and race dates. Chair Canella stated that the Commission has not renewed the license for Prairie Meadows as there are areas of concern in the Operating Agreement. Tom Flynn, attorney for RACI and Prairie Meadows, covered the areas in the Second Amendment to the Operating Agreement which addressed the concerns the Commission had with the first Operating Agreement. The Commission was concerned that the ownership and control of Prairie Meadows remain with RACI, and not Polk County. Mr. Flynn addressed each area of the Second Amendment to the Operating Agreement on an individual basis. Page 2, Section 2 deals with the purses to be awarded to horse owners. He stated that monies generated from the gaming will be used to supplement the purses. Commissioner May indicated that the Commission has been provided with a copy of the proposed purse structures with certain increases over a period of time, and in comparing the proposed purse structure and operating agreement, she asked if the Commission could assume there was a commitment to the purse structure as a minimum amount. Mr. Flynn indicated that was true for RACI, and indicated the question should also be asked of county representatives. She also wondered if revenues came in in sufficient amounts to pay off the bonds, that RACI would be willing to address the purse structure again and increase it. Mr. Flynn stated that it was RACI 's goal to enhance the racing industry; they are not abandoning their commitment to racing with the acquisition of gaming.

The Commission next addressed an area of concern that the County has approval rights of the general manager, the vice-president of pari-mutuel operations, vice-president of casino operations, and the chief financial officer of RACI. The County was not willing to forego this approval as they did not want RACI to enter into contracts which might be deemed excessive or violate certain bond and tax considerations. Chair Canella stated that one of the ways to gain control of a company is to have hiring approval of top management and representation on the Board - the county will have the power to appoint three of the nine people on RACI's board. These three people will have no vote as to the other six members of RACI's board.

Eliza Ovrom, attorney for Polk County, and Martha Willits, Chair of the Polk County Board of Supervisors, also addressed the Commission regarding the amendment to the Operating Agreement which were necessitated by the change in legislation to allow slot machines at Prairie Meadows. Ms. Ovrom stated that the legal standard under which she feels the Commission is judging the contract is the law which states that the licensee shall not assign or turn over operation of the gaming to another party. She indicated that this contract does not turn control of the operation over to Polk County. The original Agreement specifically states that RACI will supervise and direct the management and operation of the facility, determine operating policy, standards of operation, quality of service and other matters affecting customer relations. She touched on the subject of Polk County having the authority to appoint three of the nine members on the RACI Board of Directors. She pointed out that Polk County has compromised significantly on its original position as several Polk County Board of Supervisors had wanted to sit on the RACI board. She feels the Operating Agreement is a very minimal attempt by Polk County to have some oversight in the investment made in the track. She asked the Commission to approve the Operating Agreement.

Commissioner May asked for clarification regarding language in various sections which were as follows:

1) Paragraph 1 of the second amendment which deals with the transfer of the slot machines to Polk County. She questioned whether or not it was Polk County's understanding that the machines would be transferred to RACI without additional payments being made by RACI. This was confirmed by Mr. Flynn and Ms. Ovrom.

2) Regarding the provisions of Paragraph 6(1) which states that all cash flow will be paid to Polk County until Polk County has been fully reimbursed for expenditures made on behalf of the track. The $62,081,980.00 figure would be reduced to its present value. The principal on the bonds is currently $38,000,000.00. The $62,000,000 figure is based on payment being made over the lifetime of the bonds to the year 2007. An exact amount could not be provided as there is no way to determine when the bonds will be paid off.

3) Paragraph 10 which deals with the appointment of board members: "The RACI board will be composed of nine members, six of whom will be elected by a majority vote of the six members, and three of whom will be appointed by Polk County." She clarified that the majority vote would be of the six members not appointed by Polk County. This was confirmed by Ms. Ovrom.

4) Charitable Contributions: She stated her concern regarding the charitable contributions, was that if all of the monies owed to Polk County were paid by 1997, and Prairie Meadows had a net profit of $20,000,000.00, this agreement would provide for $1,000,000.00 to go to the licensee, and $19,000,000.00 to the County, with the exception for charitable contributions. This contract essentially abdicates RACI's ability to change that allocation of the net profit unless they can do so

through the charitable contributions section. Commissioner May indicated that if Prairie Meadows ever reaches the point where it has paid all of its debt to Polk County, the Commission would be interested in looking at and approving that portion of the budget which deals with charitable contributions. She feels this would be necessary in this particular situation due to the unusual arrangement.

Secondly, in the event that the bonds are paid off, the Commission has been furnished with a copy of a proposed purse structure, she asked if the gaming revenues would be used to supplement purses. Ms. Ovrom confirmed this. Commissioner May stated that the Commission would need to retain the right to review that portion of the budget which deals with the amount allocated to purses, to approve the purse structures each time, in addition to the allocation to the purses.

Commissioner May stated that what she was trying to accomplish was to lay a foundation so that over the term of the contract, as personalities and membership changes, the underlying purpose of the contract will not be lost.

The Commission is concerned about Polk County having three members on RACI's board, and also have veto power over the top four positions which they feel gives too much control to Polk County. Jeff Farrell, Assistant Attorney General for the Commission, informed the Commission they were within their rights to require the County to insure that the licensee has control over the track. He indicated that, with this contract, Polk County has some functions of control of operations, and that until the Commission is satisfied, they are within their rights to require additional changes.

Chair Canella stated he felt the Board had three choices: 1) defer further action today pending further clarification; 2) approve the agreement; or 3) turn down the agreement. He indicated that Prairie Meadow's license terminates on December 31, 1994; and if the Commission has not approved an Agreement prior to that time, Prairie Meadows will no longer be a viable operation.

Jack Ketterer, Administrator, stated that he appreciated the efforts of everyone in trying to put together an Operating Agreement, and the concessions made by everyone. He felt it was important that Prairie Meadow's obligations be broken down and specifically stated as they are in Section 3.3B.

There was a lengthy discussion regarding the supplementation of the purses to be paid, the purse structure, and charitable contributions.

The discussion returned to the issue of the board members appointed by the County, and their approval of the top management positions. Ms. Ovrom stated she felt that the members appointed to the County, by law, will owe their loyalty to the RACI board, and doing what is in the best interest of the Board and Prairie Meadows.

Commissioner May asked if there was a legal reason for County approval of top management positions. Mr. Flynn stated that in his conversations with bond counsel they indicated that if there was a contract entered into that can not be terminated after three years by RACI, that could violate the Internal Revenue Code.

Chair Canella called for a motion. Commissioner May made a motion to approve the Operating Agreement as amended with the understanding articulated earlier concerning charitable contributions, purses, the interpretation regarding the transfer of the slot machines without additional consideration, and if the Agreement is further amended to provide that Polk County would have approval rights of only the general manager with said amendment to be completed by November 18, 1994. Commissioner Sealock seconded the motion. Chair Canella called for a roll call vote. The motion passed unanimously. (See Order No. 94-113)

Commissioner Whittenburg made a motion to defer action regarding the approval of the RACI/Prairie Meadows license and race dates for the 1994-95 season until the November 18th meeting. Commissioner Sealock seconded the motion which passed unanimously. (See Order No. 94-114)

Chair Canella moved to the next item on the agenda which was the renewal or revocation of the license for the National Cattle Congress (NCC) and Waterloo Greyhound Park (WGP). He indicated there were four or five people selected to speak who he felt would cover the pros and cons of this issue very thoroughly; however, anyone who wishes to speak will be allowed to do so. He called on Augie Masciotra, General Manager of WGP, to address the Commission.

After Mr. Masciotra's comments, Chair Canella called on Linda K. Vanderloo, Director of Racing and Administration, to summarize the report of Dr. Robert Gillette, who has an extensive background in greyhound racing. Ms. Vanderloo stated that Dr. Gillette, in the summation of his report, indicated concerns about the floor mats in the starting boxes, rocks on the racing surface, the coil system, the boiler, smoke detectors in greyhound housing areas; repair and replacement of crates in the holding area, a plan for changing the sand in the ginny pit, replacement or repair of rusting doors leading to the turnout pens; rusted fence panels in the turnout pens, changing the sand in the turnout pens, inadequate lighting in the turnout areas; rusted meat freezers, and replacement of the crates in the kennels. He further stated with the deficient areas addressed sufficiently for the state racing officials within an acceptable time frame that he did not see anything that would prevent the track from operating.

Mr. Masciotra responded to each issue and indicated that they had been or were in the process of being corrected.

Commissioner May questioned Mr. Masciotra on the proposed handle, and the number of performances. Mr. Masciotra stated they had 110 performances last year, and are proposing 122 for

the 1994-95 year; however, they would not be racing on the days which historically have a low attendance. Mr. Masciotra feels that he can compensate for a 12% reduction in his proposed figures; however, if he is off 20%, it will cost him $37,000.00. She also questioned him on the balance sheet and the cash flow from last year.

Mr. Masciotra stated that renewing the license and allowing the live racing season, state and local taxes would be generated, the physical assets are maintained, and would provide the creditors and vendors an opportunity to be paid, and provides NCC with time to find a solution for uses for the facilities. He indicated there have been several proposals presented.

Chair Canella stated that he did not think NCC would be able to obtain a loan from normal sources. Mr. Masciotra concurred with the statement. Chair Canella went on to note that the current financial statement includes a note to Casino Magic for $300,000.00 at 11% interest, but there is no provision shown in the financial projections for repayment. Mr. Masciotra stated they would stand in line with the other creditors.

Mr. Farrell asked Mr. Masciotra how far the loan from Casino Magic would get them as it relates to future viability. Mr. Masciotra stated it was anticipated the loan would get them through the 94-95 racing season. Mr. Farrell noted that the loan would only guarantee the payment of taxes and purses but would not guarantee payment of wages to track employees should the track shut down early. Mr. Farrell asked Mr. Masciotra about the projected income totals submitted. Mr. Masciotra feels the increase in race dates will generate the revenue which will overcome the historic decline in revenues.

Chair Canella asked Mr. Farrell if he was correct in thinking that just because NCC was in bankruptcy, that was not a valid reason to revoke the license. Mr. Farrell indicated that was correct and stated that the Commission should not consider the fact that NCC is in bankruptcy as part of the revocation proceeding. They can consider issues of financial viability and factors that surrounded the bankruptcy.

John Titler, attorney representing NCC in bankruptcy, stated that the reorganization plan filed with the Bankruptcy Court in July was predicated on the passage of the September 27th referendum and is null and void. The NCC Board has directed the interim manager and him to seek the permission of the Commission to proceed with a live racing season, as well as other interim operational matters to try to maintain the status quo and preserve the assets in anticipation of presenting a new reorganization plan. Mr. Titler stated that it was significant to note with regard to financial viability that they are proposing to have a live racing season with coincidental simulcasting that would run through April 23, 1995, and they don't know what will happen after that. He is hopeful that a reorganization plan can be worked out which will meet some of the objectives that NCC established when it filed for Chapter 11 bankruptcy, one of which was to preserve the NCC Exhibition Fair. He feels that another reorganization plan can be filed within 60-90 days.

Chair Canella asked Mr. Titler if foreclosure action had been started against the facilities. Mr. Titler stated that such action had been initiated in June, 1994; however, the automatic stay in the Bankruptcy Court prevents the foreclosure action from proceeding to a Sheriff's sale without going back to the Bankruptcy Court to amend the automatic stay. He expects a Summary Judgement to be issued in the foreclosure action within the next 40-60 days. The foreclosure action can run parallel to the bankruptcy proceedings. The foreclosure action has not sought to interrupt the possession of NCC of its assets, and probably will not so long as NCC is able to maintain the status quo to keep the assets insured and maintain the value.

Mr. Farrell asked Mr. Titler if future reorganization plans included provisions for additional revenue sources to keep NCC viable over the long term. Mr. Titler indicated that it could; however, an option would be that the greyhound park as a facility could be reorganized in some way to produce revenue with regard to that facility.

Mr. Farrell also asked Mr. Titler to describe to the Commission members what portion of the debt NCC would have to pay if the Chapter 11 continues. NCC has approximately $7.8 million of debt. Mr. Titler indicated he did not have a set answer to that question. The answer is a matter of bargaining with regard to the holders of the first lien, as well as other creditors, as they might be willing to take substantially less in cash. The minimum that would have to be paid is the value of the assets in a liquidation if NCC were to continue in Chapter 11.

Mr. Farrell asked Mr. Titler about the Waiver Agreement. Mr. Farrell indicated it was his understanding that it was incorporated into the Master Agreement with Casino Magic.

Tom Fiegen, court-appointed attorney for the Official Committee of Unsecured Creditors in the NCC bankruptcy case, addressed the Commission. The Unsecured Creditor's Committee represents the 124 creditors who are owed a total of $1,200,000.00. The unsecured creditors will not receive any payment until the bondholder banks who are owed in excess of $3,500,000.00 are paid in full, the City of Waterloo who is owed $800,000 is paid in full, the private investors who are owed $550,000 are paid in full, and the State of Iowa and Commission are paid in full. This committee functions as a watchdog over the reorganization process. The Unsecured Creditor's Committee filed its own plan of reorganization on July 15, 1994, which called for the resignation of all present members of the NCC board. The NCC board currently has six members out of a possible eleven. All actions taken by the Unsecured Creditors Committee were for the express purpose of saving the WGP license and to facilitate the granting of a gaming license. Mr. Fiegen urged the Commission, on behalf of the Unsecured Creditors Committee, to allow NCC/WGP to retain its license and to allow it to conduct a live racing season in 1994-95. Mr. Fiegen distributed copies of his prepared statement to the Commission.

The next person to speak regarding WGP was Jay Nardini for the group "Citizens Voting No". He stated that what was best for WGP was not necessarily in the best interests of Black Hawk County. He requested the revocation of the license for WGP. Mr. Nardini distributed copies of his remarks to the Commission.

Rush Nigut, from the Crawford Law Firm who represents the Iowa Greyhound Association (IGA), addressed the Commission. He indicated that the IGA believes that Waterloo Greyhound Park can operate profitably and urged the Commission, if they find likewise, to renew the license. He turned the rest of his presentation time over to Bob Rider, Rider Kennel and a member of the IGA. He addressed various issues raised by previous speakers and by Dr. Gillette in his report on the conditions at the track. He stated this was the first time since greyhound racing was legal in Iowa that there would be no live racing. He requested that the Commission grant Waterloo a license.

Bruce Norris, Senior Vice President of Casino Magic, stated that their motivation for loaning WGP money for the 1994-95 season is an attempt to recoup some of the money they have invested, as well as giving NCC time to review some of the other options available to them which would enable Casino Magic to get some of their money back. They feel this is a low-risk investment due to their marketing expertise, and they will gain expertise in the greyhound track operations as they are looking to operate tracks in other parts of the country. Their only involvement will be as a consultant at no charge.

Jack Roehr, currently on the Board of Supervisors of Black Hawk County, stated that any job lost in Black Hawk County is a step backward on the road to economic recovery. He strongly supported the renewal of the license for WGP.

Jacque Schneph, founder and president of Retired Greyhounds As Pets, informed the Commission that her organization does have a plan to take care of the dogs in the event the Commission does not grant WGP a license. She has the expertise and experience to handle that many dogs. This would require the cooperation of many different organizations and people. Food and reasonable vet care are available at no cost to the trainers.

Kathy Oberle, representing Citizens for Economic Development, addressed the outstanding debt that the citizens of Waterloo have with regard to WGP. She also touched on the unemployment rate in Black Hawk County. She stated that the Commission has very little to lose; however, the employees at the track have a lot to use.

Terry Poe Buschkamp, Executive Director of the Waterloo Convention and Visitors Bureau, asked that the Commission grant the license to Waterloo for a live season in 1994-95 as tourism has become very important to the economics of Waterloo.

Sandra Eggers, citizen and independent writer from Cedar Falls, asked the Commission to revoke the license for WGP. She feels that there have been statements made which should cause concern as to who will be in control of the license at WGP.

Hope Anderson, businessman from Waterloo, indicated that a major hotel chain had withdrawn from the development of 61 acres stating they did not feel the revenue would be there to fill the rooms. He feels that tourists will be given a negative impression that Iowa can not support the tracks and the gambling that is here, and other events that are here. He feels there would be a widespread economic impact on the community should the track be closed. He asked the Commission to not shut the door on the tremendous efforts and investments that have been made.

Frank Bowman, citizen of Waterloo, indicated that there have been several companies in Black Hawk County who have had to close their doors, and he has heard from some of the people employed at those companies who are frustrated that WGP is in bankruptcy and are still being allowed to borrow money. There are several major companies/businesses which are building in the same area as WGP, and could provide jobs. He asked the Commission to support the will of the majority of the voters in Black Hawk County who are against expanded gambling, and not renew the license based on the jobs that would be saved.

Commissioner May asked Mr. Nardini to identify the negative that would exist in proceeding with live racing in light of the agreement by Casino Magic to proceed without the possibility of another referendum until after the next legislative session. Mr. Nardini stated that the primary opposition in Black Hawk County is to the expansion of gambling. They have never stated that WGP should close, and the only reason they are taking that stand now is that if the license is granted, the ability to have a third referendum is there.

Commissioner Canella informed the public that any decision reached by the Commission will be based on the Commission members' interpretation of the Code of the State of Iowa, and the rules and regulations of the Racing and Gaming Commission. The decision will not be based on emotion, or other criteria which they feel does not pertain to the issue.

The Commission took a short break.

Commissioner May asked Mr. Masciotra about NCC's position regarding a third referendum. Mr. Masciotra stated that NCC has taken the position that there will not be a third referendum. It was determined that under the current law, only NCC could request that a referendum.

Commissioner May then asked Ms. Vanderloo about available staff at WGP. She indicated that the Des Moines office has been dealing with this possibility. IRGC would need to provide 14 days notice

to those employees who would be reassigned to Waterloo. Staff would also need to verify that certain conditions have been rectified according to Dr. Gillette's report and recommendations.

Commissioner May asked Mr. Masciotra how long the purses could be maintained, or how WGP was going to maintain its viability on a long-term basis, or nine months. Mr. Masciotra felt they could go longer than nine months as they would be receiving simulcasting revenue at that point in time. He felt that another plan of reorganization would be put together within the next six months.

Commissioner Canella indicated that he could not see any future past this season, and when he looks at future viability, he looks for long term viability, not short term.

Commissioner Canella called for a motion. Commissioner Whittenburg made a motion to renew the license for the upcoming 1994-95 racing season, based on the resolution passed by NCC to not request a third referendum until the 1995 session of the legislature concludes and hopefully addresses the issue of how often a referendum can be held.

Commissioner May stated that this issue has been a long, drawn out process and a difficult road. She does not feel that WGP can survive.

Chair Canella stated that Waterloo has been a credit to the industry. They have abided by the rules and the Code of the State of Iowa, and are quick to correct any problems brought to their attention. In his interpretation of the criteria for revoking the license, he always returns to the issue of financial viability and he can not convince himself that they have the ability to survive on a long term basis.

Commissioner Sealock agreed with the comments made by Chair Canella. There is also the problem with the fact that the loan from Casino Magic did not protect the workers should the track close prior to the end of the racing season.

Commissioner Whittenburg's motion was withdrawn for lack of a second. Chair Canella called for another motion.

Commissioner Sealock moved to revoke the license for WGP with extreme regret. Commissioner May seconded the motion. Chair Canella called for a roll call vote. Prior to the vote being taken, Chair Canella asked Mr. Titler if NCC/WGP would consider voluntarily surrendering their license.

John Titler requested the Commission to defer any action on revocation for two weeks to give NCC/WGP the opportunity to investigate the possibility of surrendering the license. Commissioner Canella asked for Mr. Farrell's input on this issue. Mr. Farrell indicated that it was the Commission's discretion as to whether or not they deferred action.

Commissioner Sealock stated she was willing to amend her motion to defer the vote until the next meeting on November 18th to allow NCC the opportunity to decide whether or not to surrender the license. Mr. Farrell suggested that the Commission should begin preparation of a Statement of Facts and other considerations that could be used for a written order.

Commissioner May summed up the motion to this point in time which is to defer the actual vote to revoke the license until the November 18th meeting to give the NCC an opportunity to explore the option of surrendering their license as opposed to having the license revoked. The legal effect is that with a revocation, they would have to wait a year before another application can be made; however, with the surrender of the license, in the event that the NCC is able to put together any of the plans previously discussed and become financially viable, they could come before the Commission and make an application for a license.

Mr. Rider informed Commissioner Canella that he could not afford to wait until November 18th for a decision. Chair Canella stated it was his opinion that by deferring they are only prolonging the agony for everyone concerned, and wanted a decision today.

Commissioner May suggested that the Commission proceed in a manner in which the license would be revoked one week from today (November 4, 1994), in the event that it was not voluntarily surrendered earlier. Chair Canella indicated that he could go along with that suggestion. Commissioner Sealock requested permission to withdraw her motion to revoke the license of NCC/WGP effective immediately. The request was granted by Chair Canella.

Commissioner May made a motion to revoke the license of WGP effective one week from today in the event that the license is not earlier voluntarily surrendered. Commissioner Sealock seconded the motion. Chair Canella called for a roll call vote. The vote was as follows:

> Chair Canella - Yes; Commissioner Sealock - Yes; Commissioner May - Yes, and Commissioner Whittenburg - No.

The motion carried 3-1. (See Order No. 94-115)

Commissioner Whittenburg made a motion to move into Executive Session for the purpose of reviewing backgrounds. Commissioner May seconded the motion, which passed unanimously.

Upon conclusion of the Executive Session, Commissioner May made a motion to adjourn the regular session of the Commission meeting. Commissioner Whittenburg seconded the motion which passed unanimously. The meeting was adjourned at 1:25 p.m.

MINUTES TAKEN BY JULIE HERRICK, CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
NOVEMBER 18, 1994

The Iowa Racing and Gaming Commission (IRGC) met on Friday, November 18, 1994, at the Ramada Inn Conference Center - Ambassador III, 1250 74th Street, West Des Moines, Iowa. Commissioners present were Chair, Richard Canella; Vice-Chair, Rita Sealock; and members Lorraine May, Del Van Horn and Nancy Whittenburg.

Chair Canella called the meeting to order at 8:30 am and entertained a motion to approve the agenda. Commissioner May made a motion to approve the agenda which Commissioner Sealock seconded. The agenda was amended to move Item No. 8 - Discussion on limiting the number of gambling boats - to come after the review of exclusivity on the Missouri River. Commissioner May amended her motion to include the change in the agenda. The motion carried unanimously.

Chair Canella then entertained a motion by Commissioner May to move into Executive Session for the purpose of reviewing backgrounds. Commissioner Whittenburg seconded the motion which carried unanimously.

Following Executive Session, Chair Canella called for a motion to approve the minutes from the November 4, 1994 Commission meeting. Commissioner Whittenburg made a motion to approve the minutes as submitted which Commissioner Sealock seconded. The motion carried unanimously.

Chair Canella then called on Walt Pyper, General Manager of Bluffs Run, to discuss contracts submitted for Bahr Vermeer & Haecker, Lt. of Omaha, Nebraska, and Andersen Construction Company of Council Bluffs, Iowa, who are the architect and general contractor respectively for the Bluffs Run casino expansion. Commissioner May made a motion to approve the contracts with Bahr Vermeer & Haecker, Ltd. and Andersen Construction Company. Commissioner Sealock seconded the motion. It was noted that John Nelson, who had signed off on the bond, is also a board member of Iowa West. The motion carried unanimously. (See Order No. 94-116)

Mr. Pyper then addressed the season approvals for the 1995 season at Bluffs Run which begins on January 3rd and runs through December 31, 1995, with a two-week closure just prior to Christmas. In order to have a license for slot machines, they must have fifty weeks of racing, and at least 290 performances. They are requesting 357 performances with one performance on Wednesdays and Sundays at 4:00 pm with fifteen races each. The purse structure will remain the same. They will have fourteen kennels in 1995. It is hoped that the revenues will increase with the slot machines, which will be used to supplement the purses. With increased purses, a better quality of dogs will come to the track which may bring more fans to the track, leading to an increase in the pools. Commissioner Sealock questioned the security plan which was submitted. Mr. Pyper indicated that it was the same as last year, and that an entirely different security and surveillance plan would be submitted with the casino license application. The same contractors used for 1994 will be used in 1995. Chair Canella called for a motion regarding the season approvals. Commissioner May made a motion to approve

the season approvals subject to the completion of background investigations. Commissioner Sealock seconded the motion which carried unanimously. (See Order No. 94-117)

Mr. Pyper then addressed Item 4D - Commission approval of an Arbitrator Considering Purse Supplements from Gaming Proceeds. Mr. Pyper and Gerald Crawford, representing the Iowa Greyhound Association, made a joint request for Commissioner May to act as the arbitrator. Commissioner May asked the parties who they viewed this role - as a mediator or a binding arbitration role.

Mr. Crawford came forward and stated that the new statute provides for the Commission to approve the annual contract negotiated between the parties. He feels this is a mediated process. Commissioner May stated then that her purpose was to attempt to bring the two sides together as opposed to making a recommendation for determination; and if she is unable to do so, then the Commission will decide the issue for them. Chair Canella called for a motion to approve Commissioner May as a mediator between the Iowa Greyhound Association and AIM, Inc./Bluffs Run. Commissioner Van Horn so moved. Commissioner Sealock seconded the motion, which carried unanimously. Commissioner May abstained from voting. (See Order No. 94-118)

Chair Canella then moved on to approval of the 1994 Operating Agreement between the Racing Association of Central Iowa (RACI) and the Polk County Board of Supervisors. Tom Flynn, representing RACI, indicated the Commissioners had the Third Amendment to the Operating Agreement before them, and requested approval. Chair Canella asked Commissioner May to summarize the changed which have occurred since the process started two months ago. She indicated that the original Operating Agreement showed that RACI would own nothing, would control little, and pass through everything. The amended agreement before the Commission today maintains the integrity of the licensee. As the Operating Agreement now stands, it provides that RACI will have significant assets, will have control over a portion of the ultimate profits of the slot machines and the track itself, and that it will actively and independently operate the facility on its own. This Agreement meshes together the requirements for the IRGC to feel comfortable with the integrity of the licensee; with RACI to maintain its own independence, and the County to meet the requirements that it has regarding the bond. Chair Canella called for a motion. Commissioner May made a motion to approve the 1994 Operating Agreement to include the Third Amendment. Commissioner Whittenburg seconded the motion, which passed unanimously. (See Order No. 94-119)

Chair Canella moved on to the approval of the license and race dates for Prairie Meadows. Mr. Flynn indicated that he was not prepared to speak on that issue, and Tom Timmons, former general manager of Prairie Meadows, was not in attendance. Mr. Ketterer stated that Mr. Timmons' original letter had given the Commission a window from April 19 through August 27, 1995. He felt that Mr. Timmons should be able to give the Commission some specific dates within that window at this time. Chair Canella called for a motion to approve the license and race dates for RACI/Prairie Meadows.

Commissioner May made a motion to approve the RACI/Prairie Meadows license and race dates with the request that RACI staff get the information to Commission staff as soon as possible. Commissioner Whittenburg seconded the motion which passed unanimously. (See Order No. 94-120)

Chair Canella called on Bruce Wentworth of the Dubuque Racing Association (DRA) who requested the Commission's approval of the third amendment to the DRA/City of Dubuque lease which is now eleven years old. The DRA and Dubuque City Council have both approved the new lease. Mr. Wentworth introduced Terry Dugan, mayor of Dubuque, who stated that the City Council approved the new lease unanimously on November 7th.

Mr. Ketterer asked about the capital improvement and renovation of the facility - is that the responsibility of the City, the DRA, or how is it funded? Mr. Dugan indicated that the DRA and the City have worked hand in hand, but would expect that the DRA would pay for the majority of the renovations.

Doug Gross, representing the Greater Dubuque Riverboat Entertainment Co. (GDREC), stated they are also in partnership with the DRA regarding the slot operations at the greyhound park. He stated they were opposed to the proposed lease agreement as they were not included in the discussions and have some serious reservations regarding the agreement: First, the rent on the facility goes from $40,000 per year to 1/2% of the coin-in in the slot machines which is estimated to be approximately $825,000, or a 20-fold increase in the rent to be paid to the City of Dubuque in addition to the fact that the lease also calls for 75% of all the net operating profits as a result of the operations that go to DRA will also be turned over to the City of Dubuque in addition to the fifty cents of admission tax they receive and the $120,000 depreciation fund which the City of Dubuque also receives. They are also concerned about the elements of control contained in the agreement. The existing Agreement along with the amendment before the Commission today, would provide the City of Dubuque with the authority to determine what capital improvements are allowed at the facility over $10,000 in value. The City also takes an additional 25% of the net profits which are to be placed in a reserve fund which can not be spent by the DRA without approval of the City of Dubuque. GDREC does not feel the lease agreement should be approved.

Commissioner May indicated that the landlord and tenant are happy with the lease agreement; she questioned GDREC's standing to contest the lease agreement on the building as opposed to the operation of the race facility. Mr. Gross stated that GDREC has an operating agreement with DRA for the purposes of operating the slot machines if they decide to put in a request for the track. GDREC has the right of first refusal regarding the operation of the slot machine operations, which they have exercised and are in the process of finalizing; therefore, they are affected by any negotiations between the City of Dubuque and the DRA associated with the division of revenue, particularly coin-in into the machines. The unit holders of GDREC, and the citizens of Dubuque, are

concerned about the extent to which Dubuque has excessive control over the DRA operations, particularly in taking control of 25% of the reserve fund which has been established and letting the City of Dubuque determine how that is to be spent, as well as a $120,000 a year depreciation fund and receiving 50% of all net revenues. Commissioner May indicated that it was difficult to conceive of a building of that nature renting for $40,000, particularly for nine years without an increase. Mr. Gross indicated that GDREC was not adverse to an increase in the rent, they do feel that a 20-fold increase is excessive.

Chair Canella called on Mr. Wentworth for a response to Mr. Gross' comments. He reiterated that the landlord and tenant both agree on the terms of the lease. The DRA vote was nearly a unanimous vote. Mr. Wentworth reminded the Commission that during the late 1980s when the track was turning out a handle of $65-70 million, the City allowed DRA to concentrate on paying down the debt. He further stated that the City has always had the ability to "empty the till" at the end of each year up to 75% of the excess profit if they so desired.

At this point, City Manager Michael Van Milligan indicated that GDREC had asked DRA to have some standing or participation in these negotiations, and DRA independently determined that GDREC did not have that standing and should not participate in the negotiations. The City of Dubuque is in agreement with that decision. The agreement contains a clause which states that GDREC may give written notice to DRA to manage such (slot) operation, in which event DRA and GDREC shall enter into a management agreement. There is no existing management agreement. He further stated that he does not feel GDREC has a clear understanding of the partnerships and roles which are in existence. He referred to a letter he received from GDREC which referred to "work at their (GDREC's) casino at the track". The casino, in fact, is DRA's casino.

Commissioner May asked Mr. Van Milligan why they decided to go with "dollar in" as opposed to "win". Mr. Van Milligan indicated this was a topic of significant discussion during the negotiations. The City felt it should be a figure which represented revenues to the operations, but should not be a figure that the tenant of the facility has the independent ability to manipulate.

Chair Canella asked the length of the lease agreement. Mr. Van Milligan indicated that it ran through 2004. Chair Canella indicated that in 1997, state tax on slot machines will be 36% or that is when it starts escalating, which is a significant tax in addition to the other expenses which need to be paid, plus rent, etc. He indicated he felt that Mr. Gross had a valid question when he questioned whether the casino could be financially viable with those kinds of expenses. GDREC's share of the profit would be in the form of a payment for management services. Mr. Van Milligan stated that the numbers used during negotiations indicated that 1/2% of the gross, which was on the low end projections comes out to approximately $600,000 per year, should not jeopardize an operation which will be generating an adjusted gross between ten and seventeen million dollars per year.

Commissioner May asked what the high end would be. Mr. Van Milligan indicated that it might be around one million per year.

Chair Canella asked about the estimated cost of renovation. Mr. Van Milligan indicated it was $900,000 to one million dollars. The estimated cost of the slots to GDREC is approximately four million dollars. Chair Canella indicated he was not comfortable with the idea that everything was not tied down at this point with GDREC - particularly since they will be paying out a significant amount for the slots and their percentage of the profits has not been determined at this point. Commissioner Whittenburg stated that GDREC only has the right to exercise an option to negotiate something and the Commission should not presume that they will.

Mr. Van Milligan stated that he agreed with Commissioner Whittenburg's statement. He then brought up the subject of the management agreement with GDREC which is on the agenda. He indicated that DRA had not seen the agreement until Tuesday morning for a meeting which started at noon. GDREC wanted DRA to sign off on the management agreement even though they had not participated in the negotiations. DRA did not feel they needed to sign off on the agreement.

Mr. Gross responded by indicating that the new lease agreement will allow the City of Dubuque to have a certain number of members on the DRA board and Mr. Van Milligan is on the Executive Board. GDREC feels it is necessary for them to be a part of the discussions between DRA and the City of Dubuque since they will be putting forth a significant amount of money. They have exercised their option and wish to operate the casino at the Dubuque Greyhound Park, but there has not been an agreement reached regarding the revenue split. This is difficult to do since the available revenues are unknown at this time.

Mr. Ketterer stated that it was his opinion that it was an agreement between the City of Dubuque and DRA, and he understood GDREC's concerns; but that is the way it should be. He cautioned the City of Dubuque that the building is a single use facility and that the only one, by Iowa law, who can operate gaming in the facility is DRA. He stated it was his hope that if the lease appeared excessive, the City would be willing to re-negotiate the lease to reflect the best interests of the financial health of the operation. Mr. Van Milligan responded to Mr. Ketterer's comments and indicated there had been considerable discussion between the two parties on this issue and the city is willing to return to the negotiating table to work out a new agreement.

Chair Canella called for a motion regarding the lease between DRA and the City of Dubuque. Commissioner Whittenburg made a motion to approve the lease as presented. Commissioner May seconded the motion. Chair Canella called for a roll call vote. The motion passed 3-2. Chair Canella and Commissioner Van Horn voted nay. (See Order No. 94-121)

Chair Canella moved to the next item on the agenda - National Cattle Congress/Waterloo Greyhound

Park (NCC/WGP) - Disposition of License. There was no one present to represent Waterloo, so Chair Canella called on Mr. Ketterer to provide the Commission with an update. Mr. Ketterer turned the floor over to Jeff Farrell, the attorney for IRGC. Mr. Farrell indicated there had been discussions between IRGC staff, Chair Canella and himself regarding a possible resolution; however, that was not achieved. NCC will be following up on a Motion they filed a week and a half ago in Bankruptcy Court. There was a hearing on Monday (November 14, 1994) on a temporary matter as to what happens with the license until the matter is heard in the Bankruptcy Court. Through discussions with Mr. Ketterer and Chair Canella, it was determined that the Commission was not opposed to a temporary stay of the Commission's action assuming that the hearing was held expediently and that no live racing would occur. The final hearing is scheduled for December 12, 1994, in the Bankruptcy Court in Cedar Rapids, Iowa.

Mr. Farrell explained the theory behind NCC's Motion for Determination Regarding Application of Automatic Stay to Revocation Resolution by IRGC. The automatic stay is a bankruptcy provision which is intended to stop a lot of legal actions being filed against someone who has filed bankruptcy, but there is an exception for actions filed by regulatory agencies. Mr. Farrell stated he felt the Commission was within its regulatory authority when it decided to revoke the license of NCC, and would qualify as an exception to the automatic stay rule in the Bankruptcy Code. Mr. Farrell anticipates a decision sometime after the twelfth of December.

Mr. Ketterer stated that the IRGC office staff has received telephone calls from various greyhound kennel owners regarding accumulated money in the purse fund since the last live meet at WGP and up until this time, and inquiring as to what will happen with that money. Mr. Ketterer stated it was the Commission's position that the money would go to the kennel operators. He was not sure whether approval from the Commission was required to release the money.

The next item on the agenda was the Southeast Iowa Regional Riverboat Commission (SIRRC) /Catfish Bend Casino - Second Addendum to SIRRC License and Operators Contract. Terry Hirsch, Director of Riverboat Gambling, stated that this amendment was necessary as the boat would not be delivered by the date specified in the first amendment. Mr. Hirsch recommended approval of the amendment. Hearing no further discussion, Chair Canella called for a motion. Commissioner Sealock made a motion to approve the Second Addendum to the SIRRC License and Operators Contract. Commissioner Van Horn seconded the motion which passed unanimously. (See Order No. 94-122)

The next item for discussion was contract approvals for the Mississippi Belle II. Mr. Hirsch presented the following contracts: Clinton National Bank - final bank loan for the new vessel and dockside improvements for $6.5 million dollars, and Roberts River Rides, Inc. which is the owner of the boat. The bank required that both be held accountable as Roberts River Rides owns the asset, but Mississippi Belle II has the cash flow. Mr. Hirsch recommended approval.

The second contract is a lease agreement for the vessel. The annual payment on the lease is $664,000. Mr. Hirsch recommended approval.

Chair Canella called for a motion regarding both contracts submitted for approval by the Mississippi Belle II. Commissioner Whittenburg made a motion to approve the contracts. Commissioner Sealock seconded the motion which passed unanimously. (See Order No. 94-123)

Chair Canella moved to the next item on the agenda - Greater Dubuque Riverboat Entertainment Company's (GDREC) Management Agreement. Chair Canella called on Mr. Gross, attorney for GDREC, to present this matter to the Commission. In June, GDREC entered into a management agreement with DRA which began on June 21, 1994, and expires on December 21, 1994. The new management agreement before the Commission today provides that the Dubuque Diamond Jo, as well as the limited liability company, will be under the management of the Gaming Development Group commencing December 22, 1994. This company is licensed in Iowa and has previously managed the boat in Sioux City. Chair Canella noted that the agreement does not contain any information regarding the casino slots. Mr. Gross indicated that a fee could not be negotiated as they have not agreed on a number with DRA. Carl Bolm, hearing of Gaming Development, came forward and re-introduced himself to the Commission. Commissioner May asked Mr. Farrell of the agreement met previous policies adopted as far as management companies operating riverboats were concerned. Mr. Farrell stated his primary concern was the same issue the Commission dealt with on the Argosy Company - whether a management contractor can actually operate a boat even though they are not directly licensed. The arrangement before the Commission shows Gaming Development as a part of the entity that is already licensed which resolved any concerns he had and is consistent with prior advice provided to the Commission.

Commissioner May also brought forward the issue of the Order under which the Commission stayed the Show Cause hearing regarding GDREC. The Commission is awaiting results from the federal court regarding GDREC. She further noted that the Order contained a specific provision which stayed the distribution of profits, and indicated the provision would remain in effect. Mr. Gross had had some discussions with her concerning the possibility of some distribution due to tax effects, but the Commission will take up that issue in January as they have not had a chance to discuss the matter.

Chair Canella called for a motion to approve the management agreement for GDREC. Commissioner Sealock moved to approve the agreement. Commissioner Whittenburg provided the second, and the motion passed unanimously. (See Order No. 94-124)

The Commission took a ten minute break..

After calling the meeting back to order, Chair Canella moved to the application for a gaming license

filed by Missouri River Historical Development Inc. (MRHD) and the Belle of Sioux City, L.P. Bruce Crary, attorney for MRHD, indicated that John Pavone, the new general manager for the Belle, was unable to be in attendance due illness, but will attend a future meeting. Mr. Crary stated that an amendment to the application had been filed at the request of IRGC staff. One item that has not be addressed in the application is the funding of the new partnership. The intent is to fund it with a quarter of a million dollars - 70% from Argosy and 30% from Gaming Development.

Mr. Crary requested that he, representatives from MRHD, the City of Sioux City, and Argosy be given an opportunity to respond to the President's presentation regarding exclusivity after hearing said presentation. Mr. Crary stated that voluminous briefs have been filed by them regarding the exclusivity question, Sioux City representatives have addressed the Commission at least twice regarding their position on exclusivity, and the new license application for the Belle requests that no licenses be issued on the Missouri River until January, 1996. Chair Canella called for any discussion regarding the license application, excluding questions regarding exclusivity.

Hearing none, Mr. Ketterer informed the Commission that a representative of Argosy was present to discuss a credit facility they have proposed which may need to be approved prior to the Commission's next meeting. The information has been provided to the Commissioners and could either be a part of the motion if the Commission approves the license application or handled separately. Mr. Crary asked if the Commission was aware that Sioux City would need until at least the 30th of November to provide for the necessary transfers between the vessels. Commissioner May clarified that what they needed was an extension of the current license and management agreement. Chair Canella called for a motion. Mr. Ketterer explained that the licensee would still need to comply with any requirements of the Commission with respect to any background investigations which have not been completed by the DCI.

Commissioner May moved to grant a license to the Belle of Sioux City, an Iowa Limited Partnership, subject to the following conditions: 1) surrender of the present license held by the Sioux City Riverboat Corp., Inc. on or before December 2, 1994; 2) provide executed copies of organizational agreements consisting of the new partnership agreement and the management and boat lease agreement referred to in the application prior to the issuance of the new license on December 2, 1994; 3) subject to the continuing obligations concerning the backgrounds; and 4) with the understanding that the approval of the credit facility is included in the motion. Specifically excluded from the motion is the portion of the application which deals with exclusivity; however, the present license holder, Sioux City Riverboat Corp., Inc., shall be permitted to continue operating the gaming riverboat in the City of Sioux City on the Missouri River from the 21st day of November, 1994, until the effective date of the new license issued to the Belle of Sioux City on December 2, 1994, for the same location. This action shall occur at the earlier surrender of the license by the Sioux City Riverboat Corp. on December 2, 1994, which operation is to continue under the terms of the management agreement already on file with the Commission, and the license would then expire on

March 31, 1997.

Mr. Crary questioned the March, 1997 date. Mr. Hirsch explained that the Commission can issue a license for up to three years, and this would put all of the boats on the same schedule for purposes of renewing the license. Iowa statute requires that the renewal application be submitted 90 days prior to the beginning of the excursion season which is April 1st.

Commissioner Sealock seconded the motion. The motion passed unanimously. (See Order No. 94-125)

Chair Canella then called on Bill Wimmer, counsel for The President Riverboat, to address the Commission regarding the issue of exclusivity on the Missouri River. Mr. Wimmer introduced Bob Sims of the Wasker Law Firm who reviewed the legal status of exclusivity.

Mr. Sims stated that The President has not and does not object to the application of the Belle of Sioux City for a license on the Missouri River. They do object, and intend to strenuously resist, any further or continued efforts to maintain or re-create exclusivity on the Missouri River. It is their opinion that it is the Commission's job to consider license applications in accordance with the criteria set forth in the Administrative Code, rules and statutes which do not contain any authorization which allows the Commission to rely upon the prior commitment; and thereby, ignore economic justifications for allowing additional licenses on the Missouri River. On August 5, 1994, The President filed a motion for hearing before the Commission which lead to the present agenda item. Mr. Sims stated that the Commission, since that time, has ruled on issues which resolved three points in the motion, but three remain: 1) Does the Commission have the legal authority to effectively contract away its ability to grant licenses in the future?, 2) Will the determination affect the effective date of license applications due to exclusivity?, and 3) Will the Commission consider the criteria in the best interest of the State of Iowa and in accordance with the statutes and Administrative Rules?

Assuming the Commission has the power and authority to grant exclusivity, there is currently no exclusivity and there is no reason to recreate exclusivity today. The current license for the Sioux City Riverboat Corp. is going to be surrendered, and Gaming Development has not relied on the prior commitment of the Commission. Argosy and Iowa Gaming Company have not relied on the exclusivity or any prior commitment to exclusivity, but entered into an agreement knowing there was a controversy regarding the exclusivity position. Mr. Sims stated that the operators in this case have no basis to request or expect exclusivity. On various occasions, members of MRHD, the non-profit, and the City of Sioux City and Commissioners have expressed concern that the city or the non-profit may have relied or been entitled to rely upon the exclusivity. Facts show, that even if exclusivity were allowable, there is no such reliance. A variety of exhibits have been submitted by The President to show what has happened in the previous year. Prior to this past summer, neither the City, County or MRHD asked for or spoke in favor of, or make any reference to a commitment, obligation or

request for exclusivity. The operator is the only one who has ever made a request for exclusivity, with one exception. In August, 1993, Summit Sioux City wanted to purchase the Sioux City Sue and take over operations with the ability to put a boat in Council Bluffs at the same time, which would have been a violation of what Sioux City and the non-profit claimed as their right for exclusivity. Exclusivity was started to attract investors for the boat. In reviewing the minutes from the original license application, when exclusivity was first discussed, on Commissioner asked, "What if you don't need this amount of time?" The original license applicant and operator told the Commission they would come back before the Commission in one year, and voluntarily give up the exclusivity if it was not needed. The original request was for five years, but the Commission granted three years. Mr. Sims stated that exclusivity is no longer necessary, and questioned whether it was ever necessary.

The Belle of Sioux City is a new license applicant who needs to come before the Commission and show an economic need and justification for exclusivity. Mr. Sims stated that until the Belle proves the need for exclusivity, the Commission cannot grant exclusivity. Argosy has made several statements that they will operate in Sioux City with or without exclusivity.

Mr. Sims stated the other issue relating to Sioux City and MRHD is the way they want the Commission to interpret exclusivity. They would like the Commission to agree not to grant licenses to operate on the Missouri River. Mr. Sims further stated that the resolution just passed by the Commission does exactly that - to the extent that it is valid and legal - there will be no future license applications granted for the Missouri River until some future date. Mr. Sims stated that Sioux City is asking for veto power, but it is not up to Sioux City to determine who will or will not get a license. That is the Commission's job, and it is done in accordance with statutes.

All the previous statements assume that exclusivity is legal. The Commission has reviewed statute, administrative rules, and case law which show what the obligations of the Commission are, what they can and can't do. Mr. Sims proceeded to state that the first job of the Commissioners is to consider license applications. The statute states, "The Commission will consider license applications." Exclusivity says, if you agree with the arguments of Sioux City and some of the other entities, that the hands of the Commissioners are tied, notwithstanding the statute, they will not consider additional license applications. Mr. Sims further stated that the Commission could not bind themselves to act any particular way in the future. As an example, if he were to ask them to guarantee a license to someone in January, the Commissioners would not, and could not, do so. The Commission does not have the authority to bind itself to a particular action in the future, not can they bind future Commission members. The Commission is required to look at each individual license application and either grant or deny a license based on the criteria set forth in the statute. The decision to grant or deny a license is a multi-million dollar decision affecting the state. Dr. Eadington will cover this issue in more specific terms.

Mr. Sims indicated they would like the Commission to rule on three issues, and rule as follows: 1) The Commission will consider all license applications according to the rules and statute; 2) The Belle of Sioux City, as a new license applicant, has not met its burden of proof, and that there is no legal or economic justification for exclusivity; and 3) The Commission will not delay the effective date of license applications due to exclusivity.

Mr. Wimmer introducer Dr. William Eadington, Professor of Economics for the Institute of Gambling and Commercial Gaming at the University of Nevada-Reno. Professor Eadington is well known in the gaming industry and has had numerous articles published.

Professor Eadington stated he was asked by The President Riverboat Casinos to look at several issues which are relevant to the exclusivity issue. He provided the Commission with copies of his report. He covered the following issues: 1) How policy makers and Commissioners, in particular, look at the issue from an economic perspective; 2) How reasonable are the claims which were made in the license application for the Sioux City company and other information provided to the Commission with regard to the visitation patterns for the Sioux City riverboat; and 3) What are the economic implications of this Commission either continuing or eliminating the exclusivity agreement that has been put in place?

Professor Eadington started with a discussion regarding the initial reasons for granting exclusivity to the Sioux City Sue which were: 1) a concern that it may not be able to attract adequate financial capital, and 2) that it would not be economically viable if it were not put into a protected market, or a regional monopoly situation. The exclusivity did allow the operation to attract adequate funding to begin operations; but has not allowed the Sioux City boat to develop the second aspect prior to the new boat and gaming management company. There are two other dimensions which are very important and which are not often brought before the Commission. When exclusivity was granted to the boat in Sioux City, it did reduce the opportunity for citizens of the Omaha/Council Bluffs area to have easy access to casino-style gaming by requiring that they travel some distance from where they live if they choose to participate in gaming. Further, it created a foregone opportunity for the State of Iowa to capture relatively significant economic benefits which could be generated if a gaming license were granted elsewhere on the Missouri River in the western portion of the State of Iowa.

One of the important dimensions is that the underlying economics of riverboat gaming in Iowa changed dramatically with the passage of the law in March, 1994 which substantially liberalized wagering conditions, loss limits, and dockside gaming. These have created a substantial interest, especially in western Iowa, in licenses for new boats. He feels that the Council Bluffs/Omaha area could take the best advantage of the economic benefits from a riverboat. He feels this is so because Nebraska currently prohibits casino gaming, and is likely to continue the prohibition for some time, Council Bluffs and Carter Lake sit right on the border of the metropolitan area and should be able to catch a significant amount of cross-border economic benefits since citizens of Nebraska will be willing

to cross the border to participate in casino-style gaming if it is easily accessible and available to them. One of the most obvious ways for a jurisdiction to capture economic benefits is to position casinos very close to metropolitan areas. The previously mentioned areas should be kept in mind by the Commissioners as they analyze the aspects of the economics before them.

The second stage of Professor Eadington's analysis dealt with how reasonable the claims were that were made by the Sioux City company in the license application, and in the letter that was presented to the Commission by Gaming Development with regard to visitation patterns. After he reviewed the documents in detail, he had the following conclusions: 1) Both documents claimed that approximately 30 percent of the market for the Sioux City Sue casino came from the Council Bluffs/Omaha area. He found some claims to be suspicious and the results difficult to believe. They used a zip code analysis along with another marketing program. One of the items noted was the "687" zip code, which is northeastern Nebraska and butts up against Sioux City, was being classified as part of the metropolitan Omaha area. This particular zip code made up 40% of the so-called metropolitan Omaha/Council Bluffs market in 1993 and 60% in 1994. The revenue figures generated by the Sioux City riverboat in 1993 and half of 1994 show a riverboat operation which will generate less than five million dollars per year in gross gaming revenues. If this is allocated to the 600,000 people living in the Omaha/Council Bluffs area, it comes out to less than $1.00 per person. Persons who live in and around riverboats normally spend $200 per capita. Since the legalization of riverboat gambling in Iowa in 1989, two Indian casinos have opened at Onawa and Sloan which are between Sioux City and the Omaha/Council Bluffs area. These casinos detract from Sioux City's ability to draw visitors from the Omaha/Council Bluffs area. One final point, the exclusivity issue is moot in 1996 regardless of the actions of this Commission unless it is renewed at that point in time. He also stated that it was likely that Council Bluffs or Carter lake would have one or more gaming operations in place in any event by that time. If that is the case, he wondered why the operator of the Sioux City riverboat would even be willing to come unless they viewed it as an economically viable operation without exclusivity. Professor Eadington stated that the exclusivity issue is not very important for the economics of the casino or the city of Sioux City.

The third area addressed by Professor Eadington was the economic implication of either continuing or eliminating the exclusivity issue. He re-emphasized that everything is driven by the fact that Iowa changed its basic law which made riverboat gaming considerably more economically viable. All gaming markets or casino markets are local or regional markets. They are able to attract people if they are the most convenient markets to population centers. The potential market in the Omaha market, based on experience in other jurisdictions, would be approximately $200 expenditure per capita from a population base on casino-style gaming in a new market. The would translate into about $120 million dollars in gross revenues per year in the Omaha/Council Bluffs market. He went one step further and assumed that a single operation was in place for 1995, and captured only 30% of the market. If this occurred, that gaming operation would generate approximately $36 million dollars per year in gross revenues, which would generate net tax revenues for Iowa in the vicinity of

$7 million dollars per year. He estimated 1,000 jobs would be generated in the state of Iowa. He did not address the secondary multiple effects that can develop due to this type of development. Professor Eadington them made the following statement: "If the Commission had the authority or the inclination to purchase the exclusivity away from someone who had a true right to the exclusivity, it would find that it could take just a very small portion of the net gain that would accrue to the State of Iowa to purchase that exclusivity, and everyone would be better off than they were before." The economic benefits that would accrue to the State of Iowa from removing the exclusivity agreement would far exceed any costs that would be imposed upon those who would benefit from having the exclusivity. In summary, he re-emphasized the point that he did not feel the economic value of exclusivity for the City of Sioux City, the riverboat operator, or the non-profit organization was significant enough to justify the State of Iowa foregoing the economic benefits that would accrue from removing exclusivity. He called for any questions regarding his comments.

Commissioner Van Horn asked Professor Eadington if he had taken into consideration the fact that Iowa does not regulate the Indian casinos when he indicated that people would not bypass those casinos in order to gamble on the Sioux City riverboat. Professor Eadington indicated that he had.

Mr. Wimmer then introduced Mayor Blankenship, City of Carter Lake. Mayor Blankenship stated that the City of Carter Lake is in a unique situation with the large population of Omaha in their "backyard". Omaha is actively pursuing legalized gaming. He feels that a delay in determining exclusivity would delay the time schedule proposed by the riverboat developers, including two for Carter Lake. He feels that every month the boats are postponed are revenues that the State, city and county governments have lost.

Mr. Wimmer then introduced Dr. Lee Bevilacqua, the president of the non-profit organization for Carter Lake - the Pottawattamie County Gaming Association, Ltd. Dr. Bevilacqua stated that Carter Lake is five minutes from regional airport, 10 minutes from downtown Omaha, 15 minutes from downtown Council Bluffs and five major hotels. It has some resort qualities - fishing, skiing, boating, and a golf course. There are plans to develop the riverfront to butt up against the Omaha riverfront to make a boardwalk. They view their association with Iowa West as a partnership, an opportunity for the proliferation of economic growth and development in the Carter Lake/Council Bluffs area with the knowledge that competition assures not only quality, but insures it. He stated they did not feel that a boat in Carter Lake/Council Bluffs would have that large of an impact on the Sioux City boat.

Mr. Wimmer stated that the Commission's decision regarding exclusivity was no less difficult today than it was in February and March of 1990. He stated there was one compelling force the Commission was looking at when they granted exclusivity - the need for financing for the entity in Sioux City. That reason is non-existent now. Mr. Wimmer stated that there is a new license application before the Commission, not a continuation of the old license. The action taken during this meeting and action taken during the August meeting stopped the license that was there which

terminated the exclusivity. He indicated that the Commissioners are now being asked to grant a new exclusivity, but they need to determine what is the same and what is different from the original request. One of the differences is that the original request did not contemplate any casinos being built so close to Sioux City, but there are now two - Onawa and Sloan. Exclusivity can not be granted because of the two Indian casinos and the fact that in February or March the Commission will more than likely authorize Bluffs Run to have slot machines in Council Bluffs.

Mr. Wimmer then gave a brief history of riverboat gambling in Iowa. There were originally five boats on the eastern border. At that point, a boat was being contemplated in Sioux City, but none was contemplated for Council Bluffs/Carter Lake. At that point in time, the law allowed a $5 per bet limit, $200 per excursion loss limit, restrictive boarding times based on the windows of opportunity for boarding for each cruise, and mandatory cruising schedules. In 1993 when law changes were contemplated to make them more patron-friendly, the issue most important to Sioux City was to be able to let people on and off the boat when they wanted to because they were now having to compete with the Indian land-based casinos. Illinois then adopted their riverboat gambling law which had no limits which provided severe competition to the boats in eastern Iowa. The caused three riverboats to leave Iowa. The President Riverboat had to overcome several obstacles when they came to Iowa - one of which was that they were not Iowa-based. The elected to stay in Iowa and work to change the law and make the legal atmosphere better for gambling in the state of Iowa. The following changes have occurred in Iowa's riverboat gambling laws: no $5 loss limit, no $200 loss limit per excursion; less restrictive cruising schedule, unlimited ingress and egress when the boats are dockside, and the ability to operate 24-hours. Iowa has experienced a resurgence of riverboat gambling. Mr. Wimmer stated that if the President were allowed to have a boat which was operational for seven months during 1995, it would generate direct tax income to the state of Iowa of approximately $10 million dollars. In summation, Mr. Wimmer stated that he knew this was a difficult decision because of their concern as to whether or not it was needed, and the precedent that was going to be set. Mr. Wimmer then introduced Ed Ellers, President of President Riverboat Casinos.

Mr. Ellers indicated they would like to have a boat in operation in early 1995 if they are granted a license. He stated that he had tried to determine what it was that everyone was attempting to accomplish. The Commissioners need to protect the citizens of Iowa to make sure that the industry prospers, and the President is looking at having a boat operational by March or April, 1995. The President does not want Sioux City or their non-profit organization to suffer. If President Riverboat Casinos is granted a license, Mr. Ellers offered to escrow an amount of money which would guarantee the City and the non-profit organization the amount of money they would receive under Argosy's projections. The City and the non-profit would be paid if Argosy does not meet its projections, goes out of business or leaves. Mr. Ellers feels that the issue of exclusivity is a business question, not a legal question.

Mr. Crary came forward to clarify two issues. He stated that there is not a new applicant - Sioux City

Riverboat Corp. Inc. applied for and received a license in June, 1992 or 1993. Sioux City Riverboat Corp. holds the license, and is a party to the new partnership. They do not own the same percentage of the boat as previously. Technically, it is a new license, but Sioux City Riverboat Corp. is still before the Commission as the license applicant. Mr. Crary also stated that the City and the non-profit organization have asked the Commission for exclusivity. Commissioner May stated that she clearly recalled MRHD and the City of Sioux City coming before the Commission and asking to have the exclusivity waived in connection with the Summit license in favor of the operator being able to put a boat in Council Bluffs. Mr. Crary did not think it was to be interpreted in that way, that it was never the intent of the City or MRHD to give up exclusivity; however, MRHD and the City are now coming before the Commission to ask that exclusivity be allowed to run its course. When exclusivity was granted, Iowa did not have the new laws, and no one else wanted to be on the Missouri River. The parties making application have only done so since the passage of the new laws.

John Mugan, a MRHD member, agreed with Mr. Crary's statement regarding the issue of exclusivity. When the laws were more restrictive, no one was willing to take the gamble on the western side of the state. He has notes from that time which indicate the Commission recognized the fact that the cities on the western side of the state did not have an established tourism trade, unlike numerous cities on the eastern side of the state. The shallowness of the Missouri River causes additional expenses in construction and engineering. He stated that he would like to review the data Professor Eadington used in reaching the conclusions stated in his report. In reviewing past history, North Sioux City had a successful greyhound racing park called Sodrac Park which closed within a few years of Bluffs Run opening in Council Bluffs. Mr. Mugan stated he felt the escrow offer by Mr. Ellers of The President was a back-hand effort to strengthen their application and affect the Commission's decision. He wondered what would happen if the Commission did away with exclusivity and The President did not end up as one of the operations. In summary, he stated that MRHD's concern was two-fold - the economic effect it would have on their project which was recognized by this Commission earlier, and for continuing moral obligation on the agreement which he believes the non-profit organization and the City of Sioux City relied on.

Harry Kearns, a city council member, stated that the only action taken by the City Council on the Summit application was to approve a letter signed by the City Manager and Mayor opposing a riverboat in Council Bluffs. The city has spent a considerable amount of money rejuvenating the riverfront.

Carl Bolm provided the Commission with additional statistics. They are now attracting 60 buses per month, as well as continuing the license plate survey. Sioux City Riverboat took the risks prior to the new laws being passed, and the referendum, and have done everything requested of them - still have the same partner, same community, same facility and docking area. He asked that the exclusivity be left in place, that it was always a part of their game plan.

Jim O'Kane, a member of the Board of Supervisors, stated that the revenues received from the boat have helped cover added expenses in Woodbury County. He asked the Commission to maintain the status quo and continue the exclusivity.

Commissioner Van Horn asked Mr. Crary if any Commissioner or staff member promised them exclusivity. Mr. Crary stated that no promises had been made to anyone other than the one originally made to the Sioux City Riverboat when the first boat came.

Commissioner Sealock stated: 1) Sioux City is not a part of the Council Bluffs metropolitan area; 2) She is not comfortable with the term "deal" used by Mr. Ellers or the business attorney from Sioux City, indicating that a deal had been made with Sioux City; and 3) She indicated that she recalled the instance of MRHD relinquishing the exclusivity during the Summit license application process in the same way as Commissioner May.

Commissioner May asked Mr. Bolm what percentage of their overall win came from the Council Bluffs/Omaha market. Mr. Bolm stated he felt it was at least what they were doing earlier which was 30-33%. Commissioner May asked how much of that percentage they would lose if a boat were to go into Council Bluffs. Mr. Bolm indicated he felt they would lose the majority - why would anyone drive to Sioux City when they have a boat in their own backyard. He did not feel that the opening of the casino at Bluffs Run would cause them to lose that much of their business because they are two different types of operations. Commissioner May then questioned whether Sioux City would be economically viable if they lost 30% of their business with the opening of a boat in Council Bluffs. The response was that if a boat were to go into Council Bluffs in 1995, they are not sure whether they would be viable; however they feel they will lose less business from the Council Bluffs/Omaha market in 1996 than they would in 1995 because of additional tourist attractions that will be completed in 1995.

Commissioner May asked if she was correct in that Sioux City has gathered some statistics within the last month, nor have they had an opportunity to read and comment on Professor Eadington's report. The Commission does not know what its options are regarding the possible licensees in Council Bluffs. She feels that making a decision at this point would be hasty until Sioux City submits their statistics, comments on Professor Eadington's report, and the Commission's meetings in January when they will review the license applications for the Council Bluffs area. At that point, exclusivity may or may not be a moot point.

Dick Wade, City Attorney for Council Bluffs, indicated that six applicants have applied for a license in the Council Bluffs/Carter Lake area with five of those basing their proposal on the fact that they would not be starting operations until January, 1996.

Mr. Crary reminded the Commission that exclusivity was granted to Sioux City to allow them to get their base built, that the question is not the amount of business they are going to lose.

Dale Black from Argosy told the Commission it is their belief that Sioux City is still a viable entity, and the time between now and January, 1996, allows them to continue to build on what Gaming Development has started, and improve on the operation already there.

The mayor of Carter Lake stated that it is very important that a decision and operations in the Carter Lake/Council Bluffs area not be delayed as Omaha will seek to pass legislation in 1995 to allow gambling at Ak-sar-ben, and if successful, it will be in operation prior to January, 1996. He felt there needed to be some light at the end of the tunnel to get the exclusivity issue handled. He questioned what Sioux City would do when Omaha has gaming if they feel threatened by one or two boats in the Council Bluffs/Carter Lake area.

Chair Canella stated that this issue was developing into a request for an approval for an application, and reminded everyone that the purpose of the hearing was exclusivity; the hearings on the Pottawattamie County applications will be in January.

Bill Wimmer indicated that he agreed with Chair Canella and Commissioner May in that the Commission needs to take the time to consider this issue seriously, but feels the Commission needs to articulate what its position is on exclusivity. He further stated that it is the Commission's obligation to maximize revenue for Iowa.

Chair Canella stated that the Code of Iowa gives the Commission complete authority on the number of licenses issued in the state. Commissioner May made a motion to defer any action regarding exclusivity until the final meeting in January. Commissioner Sealock seconded the motion which passed unanimously. (See Order No. 94-126)

Chair Canella called on Bill Logan, chair of ILIAMO Area Riverboat Commission in Keokuk which was recently organized for the purpose of bringing a boat back to Keokuk. They will present statistics to the Commission showing that the area can support two boats.

Chair Canella then moved on to the next topic - a discussion on limiting the number of gambling boats in Iowa. Mr. Ketterer indicated that there has been some discussion on the pros and cons of limiting the number of gambling boats. The statutes in Indiana, Illinois, and Louisiana limit the number of boats on certain rivers and/or lakes. Iowa and Mississippi have no limit on the number of licenses that can be issued. Iowa's statute does state that the Commission shall determine the number, location and types of licenses. He feels this is an issue the Commission needs to deal with in order not to abuse the authority given to it by the Legislature. Since the legislation passed, four new boats have opened in Iowa, seven applications have been received, and one or two additional parties have

expressed an interest in submitting applications. The perceived potential markets are being filled with riverboats, as well as the racetracks which are now authorized to have slot machines, and the three tribal casinos. The benefits in allowing an unlimited number of boats would be that if the Commission were solely trying to maximize the tax revenue, the free market place would allow them to do that and would capitalize on the economic impact in terms of the number of jobs. The down side is the increase in social costs and regulatory costs, which are reimbursed by the operators, but it places a greater responsibility on the Commission to determine who the most financially sound and economically efficient operators are because those that are not would not success and eventually cause problems for the State and the Racing and Gaming Commission. One item predetermined for the Commission is that there are contradictory goals in the statute: one being that the Legislature has imposed a very high tax rate which equals or exceeds any other state - 20% of the adjusted gross revenues. The purpose for the implementation of riverboat gambling and legalization was riverfront restoration and to bring new vitality to the riverfront towns. That is difficult with that high of a tax burden unless the operator has some type of competitive protection. Those are just a few of the pros and cons which need to be considered when determining the number of licenses.

Chair Canella asked Mr. Ketterer if this item would be on a future agenda in order to obtain public input. Mr. Ketterer indicated that it would be on a future agenda.

Chair Canella then moved to the January meeting dates. Mr. Ketterer stated that the tentative schedule for the January meetings of the Commission is to conduct some regular Commission business on the morning of January 18th, and then go into Executive Session in the afternoon and evening for the purpose of background investigation reports from the DCI which will include the Pottawattamie County applicants. On January 19th, the Commission will hear presentations from three of the Pottawattamie County applicants in the morning, and three in the afternoon. There will be a question and answer period following each presentation. The meeting will be held in Des Moines at the Ramada Inn Westmark in the Ballroom. On the 26th of January, the Commission will receive staff and public input on the Pottawattamie County applicants from anyone who wishes to do so. If necessary, the Commission will meet on January 27th to make a determination on the license. There has been a considerable amount of interest in the Council Bluffs/Carter Lake area. The Christiansen/Cummings study ordered by IRGC should be available within the next week or two. A representative from Christiansen/Cummings will be at the January 26th meeting to answer any questions, or explain any assumptions that were included in the study.

Chair Canella asked if there were any additional public comments. Hearing none, he called for a motion to adjourn the meeting. Commissioner Whittenburg so moved, with Commissioner Sealock seconding the motion. The motion passed unanimously.

MINUTES TAKEN BY JULIE HERRICK, CPS