IOWA RACING AND GAMING COMMISSION
MINUTES
JANUARY 16, 1997

The Iowa Racing and Gaming Commission (IRGC) met in The Granary Room at the Comfort Suites Hotel, 11167 Hickman Road, Urbandale, Iowa. Commission members present were: Rita Sealock, Chair; Nancy L. Whittenburg, Vice Chair; and members Brad Peyton, Bill Hansen and Jackie Allen.

Chair Sealock called the meeting to order at 9:00 AM and requested a motion to approve the agenda. She noted there were two item "E"s under Agenda Item 10. Commissioner Hansen moved to approve the agenda. Commissioner Peyton seconded the motion which carried unanimously.

Chair Sealock called for a motion regarding the approval of the minutes from the November 26, 1996 Commission meeting. Commissioner Peyton moved to approve the minutes as submitted. Commissioner Whittenburg seconded the motion which carried unanimously. (See Order No. 97-1)

Chair Sealock proceeded to call on Michael Hlavsa, Vice President of Midwest Operations for Lady Luck, to advise the Commissioners on the Master Plan for Expansion at Lady Luck Bettendorf. Mr. Hlavsa explained that when Lady Luck applied for their license, they projected annual visitors of approximately 1.2 million. In 1995, they had 1.5 million in 8 ½ months, and in 1996 they had 1.6 million. They had over $61 million of annual gaming revenue in 1996, 50% higher than they projected in their application. Lady Luck projected they would contribute approximately $1.6 million annually to the Riverbend Regional Authority; however, in 8 ½ months of operation in 1995 they provided over $1.2 million, and over $2.3 million in 1996 - $700,000 more than originally projected. In 1996, the City of Bettendorf received $1.1 million from Lady Luck.

Mr. Hlavsa announced that Lady Luck Casino Bettendorf plan to build a 250-room hotel, a 100 slip recreational marina, indoor swimming pool and fitness center, restaurant facilities and a fully enclosed walkway to the riverboat casino. Hotel guests will be able to access the riverboat on the second level via an enclosed walkway which will span the levee between the hotel and riverboat. The proposal to the City Council includes approximately $7.5 million in infrastructure improvements which would include a traffic overpass and a 500 space public parking garage to be funded by Tax Increment Finance Bonds, the revenue of which would be derived solely from real estate taxes on the project improvements. Lady Luck will also move forward with securing tenants for the Lady Luck Center commercial retail structure. Mr. Hlavsa indicated there were three aspects of the project which needed to be in place before the project could go forward: financing, construction, and approval of the agreement with the City of Bettendorf. Lady Luck expects to perform some due diligence regarding the financing over the next 30-40 days. They have entered into a Letter of Intent with Miller & Schroeder Investments Corporation out of Minnesota. Additionally, they have entered into a preliminary construction agreement with Ryan Companies US, Inc., who is requesting that they receive some payment prior to the execution of the final construction agreement contract being signed. Lady Luck is asking for the Commission's approval to expend these fees prior to the final document being submitted for approval.

Mr. Hlavsa also informed the Commission that Shawn Ellis has been named general manager of the property, and that Nancy Donovan, formerly Director of Marketing, will be returning as assistant general manager.

Ann Hutchinson, Mayor of Bettendorf, advised the Commission that Bettendorf is pleased with the commitment to the community shown by Lady Luck. She noted that Lady Luck has been a good corporate partner. Mayor Hutchinson noted that the traffic overpass will help to connect the downtown area and the Lady Luck facilities, as well as open some additional areas for development.

Mr. Hlavsa noted that all of the final contracts for financing and construction would come before the Commission.

Commissioner Whittenburg asked if Lady Luck was building the hotel on their own. Mr. Hlavsa indicated that was the plan at this time. Lady Luck Casinos does own and operate hotels in other jurisdictions. The purpose for their hotel is to enhance the market in the area rather than drawing business from other hotels in the area.

Jack Ketterer, Administrator of the IRGC, expressed his pleasure at Lady Luck's progressive thinking on this issue. He feels it will help to secure Lady Luck's position in the gaming market in that area.

Commissioner Allen noted that she was pleased with the project, and stated that it indicated Lady Luck's commitment to the community.

Commissioner Hansen stated that he had read that Illinois' gaming revenues were declining which was being attributed to the Iowa riverboats, and asked if they felt they were getting more of the Illinois market. Mr. Hlavsa stated that he felt more individuals were coming to the boat; but that Lady Luck did not want to see the Rock Island boat leave as there are three different types of gaming in the Quad City area. He did go on to state that he felt the Indiana market was having more of an effect on the Illinois market than Iowa.

Hearing no additional comments or questions, Chair Sealock called for a motion. Mr. Ketterer stated, and Mr. Hlavsa, confirmed that the Letter of Intent with Schroeder & Miller outlines the structure of what they intend to enter into and the final document would come before the Commission at the March meeting. He went on to note that the interim agreement with Ryan Construction has to do with design work which will be folded into the final construction contract which will also be coming before the Commission in March. Mr. Ketterer advised that this was not an action item on the agenda. Mr. Hlavsa noted they were not seeking Commission approval, just providing them notice that these contracts would be coming, and that expenditures may already have

been made when that occurred. The Commissioners informally indicated they did not have a problem with Lady Luck proceeding on this basis.

Chair Sealock then moved to the next agenda item - Rules/Notice of Intended Action. Mr. Ketterer noted there were five rules being noticed at this time. The first simply reflects the change in IRGC's office address. The second changes language which says "riverboat boards" to "gaming boards" as the Commission has gaming board rulings which originate from gaming violations or infractions which have occurred at racetracks. The third rule changes the time frame when racetrack license renewals are considered from July to September based on the current status and racing dates of the racetrack licensees. It is felt that this change will allow the Commission, as well as the licensee, to better evaluate the racing dates from the current year before applying for racing dates for the subsequent year. Item four deals with the duties of the brakeman which basically is to insure the proper operation of the lure during races. The last item is a rule changing language from "coggins" to "equine infectious anemia"(EIA) as there are now tests for EIA other than the coggins test. Mr. Ketterer recommended that all of the rules under Notice of Intended Action be approved.

Hearing no comments or questions regarding the rules under Notice of Intended Action, Chair Sealock called for a motion. Commissioner Whittenburg moved to approve the Notice of Intended Action on Administrative Rules 491-4.1, 491-6.3, 491-7.8(14), 491-10.15 and [491]. Commissioner Peyton seconded the motion. Chair Sealock called for a roll call vote. The motion carried unanimously. (See Order No. 97-2)

Chair Sealock then asked Mr. Ketterer to address the rules which are up for final adoption. Mr. Ketterer stated these rules will reduce the document retention requirements of the licensees, allow a horse to enter a race without a negative coggins test certificate and eliminate a redundant rule. Mr. Ketterer recommended that these rule changes be approved.

Hearing no further comments or questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve the changes to Administrative Rules 491-4.31, 491-10.5(15)a and 491-24.15. Commissioner Allen seconded the motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-3)

Chair Sealock then called on Prairie Meadows(PM) and the Racing Association of Central Iowa(RACI) to report on the progress in their negotiations with Polk County. Tom Flynn, legal counsel for PM/RACI, reported that since the November meeting, both parties have proceeded toward arbitration with each side submitting proposed individuals to act as arbitrator. If the parties are unable to agree on an individual, the matter will be turned over to a Polk County Judge to name the individual under the terms of the Operating Agreement. Polk County and PM/RACI met on January 15th to discuss the possibility of going to mediation, and both parties have agreed to give it a try. It is anticipated that will occur in a week or two. If a resolution is not reached, Mr. Flynn

stated that he felt arbitration would begin sometime in February, hopefully would be resolved by the end of February and no later than mid-March. Mr. Flynn noted that the Operating Budget submitted by RACI/PM and the proposed purse structure are considered to be in effect under the terms of the Operating Agreement until such time as an arbitrator reaches a decision or the two parties reach an agreement which could be contrary to the Operating Agreement.

Commissioner Hansen asked if the basis of the disagreement with Polk County centered on the purse level. Mr. Flynn stated that the purse structure and capital improvements are the two most controversial areas. Commissioner Hansen stated that he had a question regarding the purse level. He noted that Iowa Code Section 99D.7(4) states that the Commission has the authority to set purse levels. He asked if that issue wouldn't ultimately come before the Commission for final approval. Mr. Ketterer stated that the statute gives the Commission the authority, and as a licensee, RACI is required to bring that issue before the Commission, and has already entered into a contract with the Horsemen's Benevolent and Protection Association (HBPA) for the first meet. The contract is on the agenda for Commission approval. He stated that he feels the Commission is the final authority on that issue based on the statute. Jeff Farrell, Assistant Attorney General for IRGC, concurred with Mr. Ketterer's interpretation. Mr. Flynn noted that a similar question had been asked at RACI's Board meeting, and after discussing the matter with Mr. Ketterer, advised the Board that if the arbitrator decided that the purse level should be lower, RACI would be required to renegotiate with the horsemen prior to coming to the Commission. If the horsemen would not agree to a reduction, RACI would have a problem. Mr. Ketterer noted that RACI had brought an agreement with the horsemen last year which the Commission did not approve, but did subsequently due to a $4 million purse supplement which was escrowed. Mr. Ketterer stated that PM/RACI's problem is that they have entered into an agreement with the County by which they have to abide, and are also required to abide by the terms of the license issued by IRGC, and have put themselves in the position of trying to meet the requirements of both sides.

Mr. Flynn stated that both parties are aware that the purse issue must be resolved, and feels they will be back before the Commission with a finalized agreement. RACI/PM is operating as if they have a purse structure of $10.8 million.

Mr. Farrell asked Mr. Flynn if RACI/PM was going to be asking for approval of the contract they have negotiated with the horse owners. Mr. Flynn indicated they were.

Liza Ovrum, Assistant Polk County Attorney, advised the Commission that there are several issues in the budget, not just the purse contract, with which Polk County does not agree. She did concur with Mr. Flynn's statements that the parties would be returning to the negotiating table shortly to discuss next year's budget and also work out a lease agreement.

Commissioner Hansen asked Ms. Ovrum to characterize the other differences besides the capital

improvements and purse structures. Ms. Ovrum indicated she did not have a list, but did name the following: repayment of $4 million to Des Moines Development, $9 million in purse escrows for the 1998 racing season, and a $700,000 impact payment to the City of Altoona.

Chair Sealock then moved to PM's Petition for Rulemaking which was deferred at the November Commission meeting. Pete Scarnatti, Director of Pari-Mutuel Operations, noted that at the November meeting he was asked to provide the Commission with a proposal on the reduction of take out levels on all live racing wagers, and a survey of slot patrons on whether or not they would have an interest in playing the over/under wager. Mr. Scarnatti indicated that PM would not be basing the success of this wager on the pool sizes, but use it as an educational tool to help patrons learn pari-mutuel wagering. He committed PM to using this wager for the entire 1997 racing season in lieu of doing the survey of slot patrons.

Chair Sealock then called on Bob Farinella, General Manager at PM, to address the reduction in takeout levels. Mr. Farinella stated that although he felt the takeout issue and the request for the over/under wager are two separate issues, PM has sought additional information regarding the raising and/or lowering of takeout levels and what effect it had on generating or decreasing pari-mutuel handle. The studies they reviewed indicated that if the takeout level was raised, the handle would decrease; and they feel the reverse would also be true. Mr. Farinella noted that he had contacted Dr. Richard Thalheimer, a recognized economist at the University of Louisville, to work with PM in doing a statistical evaluation and put together a plan for lowering the takeout percentage on all wagers at PM.

Chair Sealock asked Mr. Farinella to be more specific on the time frames for implementing the above plan. Mr. Farinella stated that Dr. Thalheimer is out of the country, but has indicated that he will come to Iowa just as soon after his return as is possible.

Mr. Farinella advised the Commissioners that when he joined PM he challenged them to "take the blinders off" on issues which had not worked in the past, and try to be creative and find ways to grow the industry, and feels the over/under wager is one way in which this can be accomplished.

Chair Sealock asked Mr. Farinella if he felt this wager could be perceived as taking advantage of the novice. Mr. Farinella stated that he did not, that the wager makes it easier for the beginning pari-mutuel wagerer to place a bet. It is intended to increase interest in handicapping, viewing the races and having an interest in pari-mutuel wagering.

Mr. Ketterer stated that he did not feel this wager brought any more to the table than the win-place-show bet. He feels that a wide variety of wagers are already offered; however, he does not want to defeat the spirit which Mr. Farinella is attempting to foster at PM. Mr. Ketterer noted that he agrees with the reduction in takeout which would foster some growth and increase the payout on wagers

which are already offered at PM. He commended Mr. Farinella and his staff for reviewing the issue and feels that PM could be in a win-win situation as lower takeout levels generate increased handle and return more to the patrons who are supporting PM. These patrons are and have been providing the profits which everyone is enjoying. Mr. Ketterer stated that he would like to see the study and reduced takeout levels put into effect and review those results at the end of the year. If at that time, PM feels those steps have accomplished what they wanted to do with the over/under wager, fine; however, if at that time they still feel the over/under wager would add more, the Commission would be willing to revisit the issue at this time next year.

Chair Sealock called for a motion. Commissioner Peyton moved to deny PM's request for Petition for Rulemaking. Commissioner Allen seconded the motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-4)

Chair Sealock then moved to PM's 1997 Season Approvals and the accompanying Agreements and contracts. Linda Vanderloo, Director of Racing/Administration for IRGC, indicated that the Commission might want to hear from PM representatives before she expressed her concerns. Darron Heldt, Director of Racing at PM, noted that the season will start on April 18 and run through July 5, 1997. Post time will be at 7:00 PM, except for the Kentucky Derby on May 3rd when post time will be 5:05 PM. He stated that Pat Pope has been hired as the Racing Secretary. PM has received permission to hold the Cornhusker Handicap, a Grade 3 race which was previously held at Aksarben, from Graded Stakes Committee. They will begin recruiting horses for the meet within the next month. He will start hiring the racing staff. The only personnel hired to date are the Association Steward and the Racing Secretary. He feels he will have all staff hired by the March Commission meeting.

Chair Sealock asked if there were any questions concerning the Purse Structure and Minimum Purse Agreement with the Iowa Division of the Horsemen's Benevolent and Protective Association, Inc. and Purse Supplements for Iowa Breds. Ms. Vanderloo pointed out that this agreement only deals with thoroughbreds; the agreement made with the Quarter Horse Association will come before the Commission with the 45-day plan for the mixed meet which begins in July.

Hearing no additional comments, Chair Sealock requested a motion. Commissioner Hansen moved to approve the Purse Structure and Minimum Purse and Purse Supplements for Iowa Breds submitted by PM. Commissioner Peyton seconded the motion. The motion carried unanimously. (See Order No. 97-5)

Chair Sealock then moved on to the approval of the Racing Steward, Racing Officials and Department Heads. Ms. Vanderloo expressed her pleasure that Dennis Kochevar would be returning as Association Steward. She is concerned about the high percentage of vacancies where other officials are concerned. She requested that information on all nominees for the various positions be

forwarded to the Commission as they are made so that IRGC staff will have time to review those individuals. Mr. Heldt stated that all positions would be filled by the March Commission meeting. He indicated that Pat Pope would be the Racing Secretary for the Thoroughbred meet. Mr. Pope is highly respected within the racing industry.

Hearing no further comments regarding the Steward or Racing Officials and Department Heads, Chair Sealock called for a motion. Commissioner Peyton moved to approve the Steward and Racing Officials and Department Heads that were submitted. Commissioner Allen seconded the motion which carried unanimously. (See Order No 97-6)

Chair Sealock then moved on to the Schedule and Wagering Format. Ms. Vanderloo indicated that Mr. Heldt had already provided them with some of this information. PM is planning to run a thoroughbred only meet from April 18 through July 5, 1997 with a 7:00 PM post time except for May 3rd which is the Kentucky Derby when post time will be 5:05 PM. There will be holiday racing on Sunday, May 25th, and no racing on Wednesday, May 28th. Nine races are scheduled daily. In regards to simulcasting, both sending and receiving, it was Ms. Vanderloo's suggestion that all uplink or downlink simulcast contracts would be approved by Mr. Ketterer or herself as has been done in the past rather than coming to the Commissioners for approval. When the race dates were approved, it was noted that it was contingent upon IRGC having the funds and staff available to properly regulate the meet.

Hearing no further comments, Chair Sealock entertained a motion regarding the Schedule and Wagering Format. Commissioner Whittenburg moved to approve this agenda item with the provision that all simulcast contracts will be submitted to the Commission office for approval by either Mr. Ketterer or Ms. Vanderloo and the dates are subject to IRGC having funds and staff available to properly regulate the meet. Commissioner Allen seconded the motion. The motion carried unanimously. (See Order No. 97-7)

Chair Sealock then moved to the equipment portion of the season approval. Mr. Heldt stated that PM has contracts in place with United Tote for the totalizator and American Teletimer Corp. for the photo finish/timer. The starting gates are in place and an operating agreement for the exercise walkers is in place. He went on to note that PM will conduct a full system check of all equipment on April 12, 1997 which is six days prior to the start of the meet.

Hearing no additional comments or questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve the Equipment portion of the Season Approvals as submitted by PM. Commissioner Whittenburg seconded the motion which carried unanimously. (See Order No. 97-8)

Chair Sealock moved to the Security portion of the submission. Ms. Vanderloo noted that IRGC staff and PM representatives use the security plan as a working tool to insure the integrity of racing.

PM has agreed that the security officer working in the test barn will be approved by the state veterinarian. Additionally, PM has written up a policy for enforcing IRGC's policy on EIA testing. Tom Timmons, Vice President of Operations for PM, indicated that he has spoken with Ron Banks of the Jockey's Guild regarding some of the space restraints at PM. PM's plan is to remove the existing jockey's room and construct a new one south of the existing room. The new room would be approximately 50% larger than the current one. PM will attempt to bring in a temporary trailer to provide a space for the jockeys to rest, more locker room, etc. Mr. Ketterer stated that this is one area which again points out the importance of the agreement with Polk County.

Ms. Vanderloo noted that IRGC had talked with PM racing staff regarding the addition of a second horse ambulance for 1998, but wondered what was being done for 1997. Mr. Heldt indicated that he was not aware of any arrangements for 1997.

The last concern Ms. Vanderloo expressed was in regard to the back entrance to the property. She noted there is a tremendous amount of traffic and activity in that area, and that IRGC would be monitoring the entrance to see if PM takes action to rectify what she feels is an accident waiting to happen.

Hearing no additional comments regarding the Security plan, Chair Sealock requested a motion. Commissioner Allen moved to approve the Security plan as submitted. Commissioner Peyton seconded motion which carried unanimously. (See Order No. 97-9)

Chair Sealock then requested that Ms. Vanderloo address the Certification of Contracts and Bond submitted by PM. Ms. Vanderloo noted that IRGC had received a letter from Mr. Farinella certifying that all contracts and financial documents outlined in Rule 491-4.28(99D, 99F) had been submitted for Commission approval. She noted that the bond is in place.

As there was no further discussion regarding the contract certification or bond, Chair Sealock called for a motion. Commissioner Whittenburg moved to approve the Certification of contracts and bond as submitted. Commissioner Hansen seconded the motion which passed unanimously. (See Order No. 97-10)

Chair Sealock then requested that Ms. Vanderloo address the additional contracts submitted by PM for Commission approval. Ms. Vanderloo advised that Mo Hyder, Director of Accounting, would review these contracts for PM. Mr. Hyder stated that PM had submitted 56 contracts for approval for FY '97. Of the 56 contracts, 48 are repeats from last year, and 8 of them are new for 1997. Forty-three of the contracts are with Iowa vendors. PM provided a brief summary of all contracts submitted for approval.

Commissioner Hansen expressed his concern as to whether or not the Commission is really fulfilling their mission under the statute and Administrative Law relating to the review of contracts. He was particularly concerned when he noted that more than 80% of PM's contracts are oral contracts. He understood that contracts for utilities, legal, accounting, and professional services would more than likely by oral. He feels that PM might technically be in compliance with the letter of the law, but does not feel they are in compliance with the spirit of the law. He feels the Commission needs to make some revisions in their procedure regarding the approval of contracts. In his opinion, if the Commission is approving the contracts, he feels they need to know if RFPs have been sent out, and how many vendors responded. If that information is not available, he does not feel they are getting an accurate picture on what kind of competitive bidding process is being used by all licensees. Secondly, he knows there are many instances in which a precise amount can not be given for a specific contract, but feels the licensee should be able to disclose the unit cost and minimum/maximum range for the contract, and does not feel oral contracts should be submitted unless the licensee is dealing with a monopoly, a limited vendor supply, or an emergency-type services or goods. He requested that Mr. Hyder respond to his comments in view of the way PM has completed their Request for Contract Approval forms in contrast to the other licensees.

Mr. Hyder agreed with Commissioner Hansen's comment that they were in compliance with the letter of the law. PM ran a list of all vendors with whom they had spent $40,000 or more in FY `96, reviewed that list to determine which ones they would more than likely continue to work with to provide goods and services for the facility. Along with PM's policy of competitive bidding, they reviewed the different products available from various vendors, and the service and quality of product provided.

Commissioner Hansen asked Mr. Hyder why, in his opinion, PM had a significantly higher percentage of oral contracts than the other licensees. Mr. Hyder noted that a lot of their vendors are on an "as needed" basis.

Commissioner Hansen stated that he was not suggesting that PM was doing anything improper, but feels that if the Commissioners are to have any input, they need additional data so that their motion regarding the contracts can be significant - that they are satisfied that the licensee has pursued the competitive process. He reiterated that he would at least like to see a unit price, where applicable. He would like to see the contract approval process tightened up. Commissioner Sealock agreed with Commissioner Hansen's comments. Commissioner Hansen stated that he had no further comments, and moved to approve the contracts submitted by PM. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-11)

Chair Sealock then called on the Iowa Greyhound Association (IGA) regarding their Petition for Rulemaking. Rush Nigut, representing the Crawford Law Firm for the IGA, advised Chair Sealock

that they were withdrawing the Petition at this time as an agreement has been reached with the track in principle, but have not agreed on language at this time.

Eric Wilson, Director of Compliance for BRC, concurred with Mr. Nigut's statement that an agreement had been reached regarding the 50% Iowa kennels rule.

Mr. Ketterer asked why this issue could not be incorporated into the kennel booking agreement, why they felt is was necessary to have it incorporated into the IRGC's rules. Mr. Wilson indicated that he would work with Mr. Crawford on that aspect.

Chair Sealock then called on Bluffs Run Casino(BRC)/IGA for the approval of the Arbitration Decision. Barry Sevedge, Director of Operations for BRC, stated that BRC will work to refine their time table in preparing the season approvals for Commission approval. Mr. Sevedge indicated there are a couple of issues which need to be tied up in connection with the arbitration and are seeking the Commission's approval of those issues. The first issue would be the use of the investment income from the escrow account to cover part of the costs associated with simulcasting. The other issue is to approve the legal form of the escrow account to be sure they are consistent with the restrictions placed on the principal and interest by the arbitration panel and that BRC is providing adequate protection of principle and getting the appropriate approvals in order to use the investment income. Mr. Sevedge indicated that the account has been funded.

Chair Sealock asked Commissioner Whittenburg if she had any comments she would like to make. Commissioner Whittenburg stated that it was a pleasure to be involved in the arbitration process - each side had well presented arguments. Each side was very cooperative in providing the arbitrators with all of the information they requested in advance. The arbitration decision addressed the percentage of gambling revenues from BR to be used to supplement the purses for 1997, and a designation of that portion of purse supplements from gaming revenue to support the Iowa breds; looked at the manner in which the $4 million purse supplement escrow awarded by The Honorable David J. Blair in his arbitration decision dated December 27, 1995 is to be held and/or utilized in the future; and the amount of supplements for the Iowa Stakes race for the upcoming season.

The arbitration panel decided that 1997 purse supplement should be 8% of the adjusted gross receipts (AGR) less gaming taxes from all BRC gambling games. Forty percent of the 8% AGR less gaming taxes, or 3.2% of the AGR less gaming taxes shall be placed in an interest bearing escrow account. The principal of the escrow account shall be used for the sole purpose of supplementing purses in the future but may not be expended without the approval of the Commission. The panel stated that the interest from this account may be used to promote and develop the Iowa greyhound industry, but may not be used to pay the operating expenses of the IGA itself, and that all expenditures are subject to the approval of the IRGC Commission. Additionally, on or before November 1, 1997, the IGA and Iowa West Racing Association (IWRA) shall propose a plan for the ultimate disposition of the

funds that are in the escrow account. The arbitration panel felt they wanted IWRA and IGA to try and reach an agreement to be presented to the Commission for approval. Barring that, each party is to submit their plan for the disposition of the fund to the Commission. Regarding the funds which are currently in escrow as a result of the 1996 arbitration decision, the same provisions will apply.

The final issue was the Iowa Stakes Race supplement. The panel determined that the original supplement was to be $175,000 to be paid in addition to the previously stated purse supplements in the decision. It is the panel's interpretation of the law that supplements are for the development and promotion of the Iowa greyhound industry. The number of dogs whelped in 1996 is anticipated to be at or below the level of 1993, prior to the beginning of the supplements. The panel also reviewed the performance level of Iowa bred greyhounds, and determined, in their opinion, that the performance level does not appear to be improving substantially. Taking that into consideration, they did not feel it was their position to give directives or mandate any action by the parties to this decision in order to develop the industry but did set forth some ideas on how to improve the racing product and how the supplements could be used to do that. The arbitration panel wants to reward improvement and development, enhancement and increased racing product, and they do not feel that is presently occurring.

Mr. Ketterer asked if the representatives from IGA and BRC had any suggestions with regard to Commissioner Whittenburg's comments, and if there were any plans to explore or brainstorm ideas. Mr. Wilson stated that BRC has started along those lines, and one of the things they have done is the simulcasting experiment at BRC. BRC/IGA have reached an agreement whereby BRC will continue to simulcast for the next 30 months and IGA has agreed to split the loss on the signal for as long as it occurs and would not take the normal split of the revenues for purses as long as there is a loss. The parties have also agreed in principle that BRC can be flexible with their live racing schedule to make the product more desirable to other outlets. He feels a finalized agreement can be brought before the Commission at the March meeting. IGA and BRC have also agreed in principle to allow an imported greyhound signal to come into BRC as long as it does not compete with the live signal to allow for a more enhanced racing product at BRC. Mr. Wilson stated that he feels this is a part of the process for enhancing the Iowa product. He asked if the Commissioners were comfortable with the situation he described to allow him to proceed to change the schedule and contact other sites to see what kind of arrangements he could make, not necessarily approval, just a sense that he is going in the right direction.

Commissioner Whittenburg stated that she felt he was going in the right direction, that simulcasting is an important part of the entire package. She went on to note that one of the most interesting parts of the arbitration process was reading the comments which were received from the kennel operators. She felt the Commission would benefit from hearing those comments at some point.

Commissioner Sealock called for a motion. Ms. Vanderloo asked that Mr. Wilson explain to the Commission what was occurring with the escrow account. Mr. Wilson pointed out that the funds were transferred to an account set up by Jerry Crawford, legal counsel for the IGA, in Des Moines on January 15th. The arbitration decision stated that the funds were to be transferred by December 31st; however, that deadline could not be met due to a number of legal issues related to the type of account being established. The parties have agreed that the investment income for the period of time would be given to the account if the Commission so desires.

Hearing no further comments regarding the arbitration decision, Chair Sealock called for a motion. Commissioner Hansen moved to approve the Arbitration Decision. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-12)

Chair Sealock moved to the next agenda item - Ameristar Casino and the substantial completion of land-based facilities as a condition of license renewal. Chair Sealock clarified that this agenda item and the duplicate one for Harveys were on the agenda because when the licenses were granted to Ameristar and Harveys, the city and county were concerned about allowing the facilities to open prior to having the projects completed in their entirety. She read the wording of the motions when the licenses were granted:

"The following conditions were placed on the applicants granted a license:

1) If the project is not substantially complete by the date of opening, that would be a basis for non-renewal of the license.

2) Any licensee required as a condition of their license to complete their project as presented to the Commission be 100% complete 12 months from the opening date.

3) All licenses issued will end on March 31, 1997. This will give the Commission authority over the licensee to ensure that the commitments of the licensee are being met.

Chair Sealock also noted that Commissioner May expressed concern that the non-profit organization continue to look at the broad community and look at the needs of, in particular, some of the applicants and people who addressed the Commission, but did not receive a license to be certain there was some equity in the region. She went on to mention the Native Americans and extra effort being made to hire some of those people who might lose their jobs due to the competition between the various gaming facilities.

Jane Bell, Public Relation Director for Ameristar, advised the Commission that when they gave their original presentation, they estimated an investment of $78 million, but have exceeded $110 million.

Chair Sealock noted that Thomas Hanafan, Mayor of Council Bluffs, had sent a letter to the Commission stating that the city would not object to the Commission granting a waiver to Ameristar in the event they are not able to complete all of their facilities by January 19, 1997. The letter noted that all land-based facilities are currently under construction, and that Ameristar has made substantial use of local contractors which has benefited the local economy.

Commissioner Hansen asked if the construction delays caused by the contractors were triggering any liquidated damages. Ms. Bell indicated that Ameristar and the contractors are in negotiations at this time. Hearing no further comments or questions, Chair Sealock requested a motion. Commissioner Whittenburg moved that the Commission consider Ameristar Casinos to be in compliance with the substantial completion requirements of land-based facilities that was a condition of their license. Commissioner Allen seconded the motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-13)

Chair Sealock then called on Verne Welch, General Manager for Harveys Kanesville Queen, regarding the substantial completion of their land-based facilities as a condition of their license renewal. Mr. Welch stated they have also exceeded the original projections for the cost of the project; they are currently at $115 million. He reported that Harveys' Board approved an additional $5 million to continue to enhance the project - an entertainment area, remodeling, and additional product. They have approximately 65 acres left to develop. He noted that Mayor Hanafan had also written a letter regarding Harveys project indicating that all land-based facilities had been completed in a timely manner. Mayor Hanafan's letter stated that Harveys has been an excellent corporate citizen and productive member of the Council Bluffs community.

Commissioner Hansen asked Mr. Welch if the construction delays caused by the contractors was triggering liquidated damages. Mr. Welch stated that a mediation hearing has been set for the end of February with the same contractor that developed Ameristar. It is hoped an agreement can be reached in mediation negating the necessity to file a lawsuit. They intend to pursue the issue as far as necessary in order to recover damages.

Hearing no further comments or questions, Chair Sealock requested a motion regarding Harveys' substantial completion of land-based facilities as a condition of license renewal. Commissioner Whittenburg moved that the Commission consider Harveys Hotel/Casino to be in compliance with the substantial completion requirements of land-based facilities that was a condition of their license. Commissioner Hansen seconded the motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-14)

Chair Sealock moved to the Contract Approval section of the agenda. Mr. Wilson presented BRC's contract with Post Time Publications, Inc. for program printing. As there were no questions concerning the contract, Chair Sealock requested a motion. Commissioner Hansen moved to

approve the contract as submitted. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-15)

Chair Sealock moved to the contracts submitted by Dubuque Greyhound Park & Casino (DGP&C). Bruce Wentworth, General Manager of DGP&C, presented the following contracts for Commission approval:

- Blue Cross/Blue Shield of Iowa - Employee Health Insurance Premiums
- Medical Associates HMO - Employee Health Insurance Premiums
- American Trust and Savings Bank - Banking Services
- International Association of Machinists and Aerospace Workers, AFL-CIO 1238 - Labor Contract
- City of Dubuque - Fifth Amendment to Lease Agreement

Commissioner Hansen asked Mr. Wentworth if the contracts with Blue Cross/Blue Shield and Medical Associates HMO were written or oral contracts. Mr. Wentworth stated that they are written contracts.

As there were no additional questions, Chair Sealock requested a motion. Commissioner Hansen moved to approve the contracts as submitted by DGP&C. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-16)

Chair Sealock moved to the contracts submitted by Ameristar Casinos. Ms. Bell presented the following contracts for Commission approval:

- Island Systems & Design - Audio, Video & Lighting in Bar
- Duray/J.F. Duncan Industries, Inc. - Kitchen Equipment and Change Order #1 for Sports Bar; Food Service Equipment for Steak House
- Commonwealth Electric Company - Electrical work in Terminal and Change Orders and Various Change Orders
- Buller Fixture Company - Food & Beverage Equipment
- Culinary Design & Fixtures - Steakhouse/Sports Bar Design & Change Orders
- Omaha Neon Sign Company, Inc. - Neon Signage on Boat; Hotel Building Signage
- Atlas Awning Company - Ramp Canopy
- Durkan Carpets - Carpet for Hotel
- Ronnie Marlene Textiles - Linen
- Shafer Seating - Chairs, Table Tops & Bases
- Andersen Construction Company - Pool Building Contract
- Perini-Andersen - A Joint Venture - Change Order #13

Hearing no comments or questions regarding Ameristar's contracts, Chair Sealock requested a motion. Commissioner Allen moved to approve the contracts as submitted. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-17)

Ms. Bell gave a brief report on the underage gambling program at Ameristar. She also had a short tape that Ameristar made regarding the consequences of underage gambling. The tape is being used for educational purposes for both youth and adults. She confirmed that a copy of the tape had been provided to the Governor's office. Due to some equipment problems, the tape will be viewed later in the meeting.

Chair Sealock moved to the contract submitted by Dubuque Diamond Jo (DDJ). Doug Gross, legal counsel for DDJ, advised the Commission that the little "Jo" had been sold and would be opening in its new venue in Port Canaveral, FL on January 17th. The contract with Williams Gaming, Inc. before the Commission relates to the replacement of sixteen slot machines.

Hearing no questions relating to the contract, Chair Sealock called for a motion. Commissioner Whittenburg moved to approve the contract submitted by DDJ as submitted. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-18)

Chair Sealock called on the Mississippi Belle II (MBII) regarding their submitted contracts. Ken Bonnet, President of MBII, stated that the Stock Redemption Agreement before the Commission will carry them through the purchase of Kevin Kehl's stock. Also before the Commission is another Stock Redemption Agreement for the remaining shareholders following the purchase of the stock. There are also contracts for lending arrangements with the Clinton National Bank and Robert & Ruth Kehl.

Hearing no further questions, Chair Sealock requested a motion. Commissioner Whittenburg moved to approve the various documents submitted by MBII. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-19)

Mr. Bonnet advised Commissioner Hansen that MBII, in its license renewal application, have submitted contracts with numerous vendors with whom they do not have written contracts, much of them with food vendors which are based on the price at the time the purchases are made. This also is true of their contracts with the motor coach vendors. Mr. Bonnet was not sure how these would fit in with the changes suggested by Commissioner Hansen earlier in the meeting.

Commissioner Hansen stated that he is interested in knowing whether or not competitive bidding was used, and some kind of unit price . If there is a unit price, then he is not so concerned with the total process, but feels the Commission needs some type of insurance of the steps taken by the licensees in submitting contracts for Commission approval.

Chair Sealock then called on Dan Kehl, General Manager of Catfish Bend Casinos, to present the following contracts for Commission approval:

- American Marine International, Ltd. - Purchase of Docking Barge
- International Game Technology (IGT) - Purchase of 12 Slot Machines
- Carl A. Nelson & Company - Installation of Ceiling Tile

Gary Hoyer, legal counsel for Catfish Bend, noted that the first contract was for the barge purchased from the Bankruptcy Court which the Commission was advised of at the last meeting. The second contract is for 12 video poker machines for the vessel. The third contract is for the installation of ceiling tile and the construction of a building on the above-mentioned barge.

Commissioner Allen requested that the contract with IGT be considered separately. Chair Sealock requested a motion on the contracts with American Marine International, Ltd. and Carl A. Nelson & Company. Commissioner Peyton moved to approve the contracts as submitted. Commissioner Hansen seconded the motion which carried unanimously. (See Order No. 97-20)

Chair Sealock stated that the Commission was now ready to consider the contract with IGT. Commissioner Allen addressed Mr. Kehl and Mr. Hoyer and asked them to remember the telephonic meeting held in October on their request to purchase a larger vessel. She quoted a portion of the minutes from that meeting which stated: "Catfish Bend is seeking the Commission's approval to replace their existing vessel with a larger riverboat without seeking approval of additional gaming positions at this time. They reserve the opportunity to do that in April when other proposals are considered." She is concerned about their request to add these games at this time; that the rationale in postponing the decision on additional gaming positions at the above-mentioned telephonic meeting was to provide all parties with the same opportunity. She does not feel Catfish Bend is honoring their commitment to the Commission not to seek additional gaming positions until April if the larger vessel were approved. Based on that meeting and statements made, Commissioner Allen stated that she would vote against the contract requesting authority to purchase the twelve slot machines.

Mr. Hoyer stated that he understood what Commissioner Allen was saying, and it was not Catfish Bend's intent to undermine what was said at that meeting. He stated that his impression from the telephonic meeting was that the Commission was opposed to putting 250 gaming positions on the new vessel, but went on to note that the new vessel has a poker bar with large holes in it. Catfish Bend would like to put these machines in the poker bar versus tearing the bar out.

Commissioner Peyton stated that he felt there was a good faith understanding from that meeting that the number of gaming positions on the new vessel would be the same as the existing vessel. He

stated that he understood Catfish Bend's position, but asked if it would be possible for them to consider those as replacements for some other machines on the vessel.

Mr. Kehl stated that he had discussed that possibility with Mr. Ketterer of putting in 10 machines and plugging two holes and pulling ten machines from the floor; however, he decided that it didn't make sense to put $100,000 of equipment in storage and Mr. Ketterer stated there was precedent.

Commissioner Peyton stated he would not classify the situation as precedent as much as consent to add additional gaming positions, but does not feel that applies in this situation where there was a good faith understanding that the number of gaming positions would remain the same.

Mr. Ketterer stated that he and Mr. Kehl had discussed this issue and stated that he had advised him to submit the contract because this situation has occurred in the past, but he recognizes that the number of gaming positions was the real issue during the October telephonic meeting. He stated that he understood Commissioners Peyton and Allen's positions.

Commissioner Whittenburg asked Mr. Ketterer to refresh the Commissioners on previous situations in which this issue has occurred. Mr. Ketterer stated that normally requests for additional machines has not been an issue, that licensees have been allowed to add machines or positions when they wanted. He felt the first time the request for additional machines became an issue was in Council Bluffs because the Commission tried to determine the number of gaming positions that market could support and then determine the number of riverboat licenses to be issued. The Commission requested that any significant requests to add gaming positions needed to come before the Commission for approval. Commissioner Sealock noted that all three Council Bluffs licensees have added gaming positions.

Commissioner Allen stated that she appreciated everyone's comments, but feels this situation is different than what has occurred in the past, and does not want to send the wrong signal to the industry that however insignificant the amount, one machine - twelve machines - 120 machines, there was a good faith agreement that the number of gaming positions would not change. She feels there needs to be accountability between the licensees and the Commission.

Chair Sealock stated that she does not feel Catfish Bend intended to violate the good faith agreement, that they did call the office and that the answer received was consistent with past Commission actions.

Commissioner Peyton asked Mr. Kehl and Mr. Hoyer what their preference would be if they were given the option of having the contract denied or having it approved subject to the slot machines being treated as replacements for existing machines. Mr. Kehl stated that he would like to have them considered as replacement machines.

Commissioner Peyton moved to approve the contract with IGT subject to the machines being considered as replacements for existing gaming positions, that there not be any net increase in gaming positions as a result of the contract approval. Commissioner Allen seconded the motion. Chair Sealock noted that rather than approve the contract with IGT as submitted, the machines will be considered replacement of existing machines, not additional machines. Chair Sealock requested a roll call vote.

Mr. Farrell asked for clarification noting that Commissioner Peyton had stated gaming positions and Chair Sealock had stated gaming machines. Mr. Ketterer noted there was no difference. Mr. Farrell stated that theoretically, Catfish Bend could put in the twelve machines and remove twelve gaming positions at tables. Mr. Farrell stated that he wanted everyone to be clear on what was being approved.

Commissioner Peyton amended the motion to indicate that Catfish Bend is being given authority to replace one machine with one machine. Commissioner Allen seconded the amendment. Chair Sealock requested a roll call vote. The amendment carried unanimously. (See Order No. 97-21)

The Commission then voted on Commissioner Peyton's original motion as amended to approve the contract with IGT subject to the machines being considered as replacements for existing gaming positions so there would not be a net increase in the number of gaming machines as a result of this contract approval. A roll call vote was taken. The motion carried unanimously. (See Order No. 97-22)

Mr. Hoyer updated the Commission regarding the Keokuk situation and potential sale of the existing riverboat. During the October Commission meeting, Catfish Bend was encouraged to solve some of the problems that had developed with respect to the southeast Iowa three community approach. Catfish Bend is concerned that a competitor in the small southeast Iowa market would jeopardize the long term viability of gaming in the area for the potential operators; therefore, they have approached Keokuk about discussing some alternatives, one of which would be a partial year presence in Keokuk, Burlington and Ft. Madison. Catfish Bend has also had some interest in their existing vessel and set some deadlines for Keokuk to respond to their offer in order not to lose out on the possible sale.

Chair Sealock moved on to the BRC hearing on violations of Iowa Code Section 99F.9 for underage gambling violations. Mr. Ketterer noted that IRGC staff and BRC have entered into a Stipulation. Lyle Ditmars, legal counsel for BRC, advised Mr. Ketterer that there was an error in Paragraph 8 where it says "...and on two occasions ..." should read "... and on one occasion ..." Mr. Ketterer reviewed the contents of the Stipulation with the Commission. Mr. Ketterer noted that in prior Stipulations which have come before the Commission a penalty had already been agreed to by the parties; however due to the various and multiple situations involved with this matter, he was not sure

enough of the Commissioner's positions to recommend a penalty amount. He also wanted to provide Mr. Ditmars and Mr. Sevedge an opportunity to address the Commission.

Mr. Sevedge advised the Commission that BRC has a zero tolerance level policy and is against under 21 gambling. He noted that it is not good business to be owned by a charitable organization, to make grants to the community, and then not operate your business in a responsible manner. Mr. Sevedge noted that BRC had not experienced any underage gambling problems until September 28th and through the month of October. When the problems occurred, BRC reevaluated their procedures, and solicited help from IRGC and DCI in order to come up with policies to correct the situation. Mr. Sevedge noted that the juveniles are playing tag, and the licensees are jeopardizing their license. The current law emphasizes the casino's responsibility to send a strong statement of public policy but does not address the behavior of the juveniles. He does not feel juveniles will stop attempting to gain entrance to casinos until they receive a direct message that they are responsible for their actions relating to gambling. He requested the media help get the message out regarding underage gambling. Mr. Sevedge noted that BRC had placed additional personnel on the floor as well as holding some training sessions with employees relating to underage gambling. They will continue to support Project 21 in the Council Bluffs area. BRC proposed that the Gaming Association attempt to change the state laws pertaining to juveniles attempting to enter casinos so that they will be required to accept responsibility for their actions. He noted that the City Attorney of Council Bluffs has provided an ordinance under which juveniles can be cited for entering casinos. He noted that the Commission has previously levied fines against licensees for underage gambling incidents; and hoped they would follow their precedent in being consistent and join with the licensees in attempting to direct resources to obtain solutions to the problem. Mr. Sevedge requested consistency in the message being given to the public that a top priority is getting better penalties against the juvenile, and help the licensees to determine what would be considered a "responsible" licensee in this area.

Chair Sealock stated that the Commission is very concerned about underage gambling, and noted that Commissioner Whittenburg had sent letters to various public officials in all gaming jurisdictions in Iowa requesting their assistance with this issue. She also noted that various City Attorneys have drafted ordinances dealing with underage gambling, but the Council Bluffs City Attorney advised her that the problems with enforcement occur at the juvenile court level. This message was given to the Governor last fall, and part of his plan for this year is to adopt legislation regarding underage gambling - possibly fines of $100, but also need to make sure that the issue becomes a family issue. Chair Sealock noted that one of the incidents involved a minor who did not speak English, and that this is becoming a huge problem in Iowa. She noted that the number of students in the Council Bluffs school district who do not speak English tripled from last year.

Commissioner Whittenburg advised that her letter had been sent to county attorneys, city attorneys, juvenile court referees or judges who preside and/or general court officers who make referrals to juvenile court for juvenile court sentence in those counties which have gaming licenses. She

received very little response from those letters, some of which wondered what she was trying to accomplish with the letter. She would call or write explaining the Commission's purpose, that the Commission has a concern in this area. As regulators, the Commission can hold the licensees accountable, but don't have the tools to hold the juvenile or adult between the ages of 18 and 21 accountable, and were requesting their assistance in doing that. Regarding the local ordinance passed in Council Bluffs, she stated that she is not aware of any reason why other cities could not pass ordinances, until there is a state law, which would make underage gambling a simple misdemeanor crime. She noted those individuals between the ages of 18 and 21 are not eligible to gamble in the state, but at that point they are considered an adult and could be dealt with in a different manner than juveniles. Commissioner Whittenburg noted there are various ways in which the court system can deal with the adult underage gambler without incarcerating them.

Chair Sealock asked Mr. Ketterer if there were any parameters he could offer the Commission in determining the penalty to be assessed in this matter. Mr. Ketterer stated that in the past, staff has looked at the circumstances involved: underage individual in the facility, but did not gamble and was discovered by a licensee's security or someone else working for the licensee, a lesser penalty is appropriate; a stronger penalty if the individual was in the casino for a significant amount of time indicating that security did not properly enforce procedures and no responsibility on the part of other casino employees in questioning the age of the individual. First time offense penalties in these more serious incidents have been in the $15,000 range. The question is whether the incidents at BRC should be counted as one incident or counted as individual incidents which would put the fine in the $100,000 range. He stated that a fine in the range of $50,000 - $75,000 would be consistent with past Commission action on underage gambling violations.

Commissioner Hansen clarified that there were six incidents in October, and wondered if alcohol was involved with all of them. Mr. Ketterer stated that all were gambling related, but only one involved alcohol. Mr. Sevedge indicated that BRC was able to determine the length of time some of the individuals had been in the casino from surveillance tapes.

Mr. Ketterer gave the Commissioners a summary of the various fines assessed against licensees for underage gambling violations.

Commissioner Whittenburg asked the other Commissioners if they felt the incidents should be considered as one offense with a fine of a lesser amount or multiples offenses which would necessitate a higher fine.

Commissioner Peyton stated that he considered the incidents to be multiple offenses due to the various circumstances. Commissioner Whittenburg agreed, and Chair Sealock felt that decision was consistent with past actions.

Commissioner Peyton suggested a fine of $40,000, with an additional $25,000 commitment on BRC's part toward a program to educate and take preventative measures to prevent this situation from occurring in the future. Chair Sealock asked Commissioner Peyton if he wanted to make the second portion retroactive to include the actions taken by BRC since these incidents occurred.

Mr. Sevedge stated that BRC has added personnel and security guards under their contract with the city which will cost about $12,000. BRC will make these personnel changes regardless of the Commission's decision. He requested that the Commission make a strong statement regarding underage gambling to help the licensees combat this issue. Commissioner Peyton stated that he feels that is one of the costs of doing business. He noted that in the first Ameristar ruling, the Commission earmarked $28,000 solely for the purpose of educating their employees, advertising, etc on underage gambling. He agreed to allow recent expenditures by BRC along those same lines, not something that occurred over six months ago. The expenditures would need to be approved by IRGC staff.

Commissioner Peyton moved to levy a fine of $40,000 against BRC for underage gambling violations, and a $25,000 contribution toward educational programs to include public awareness advertising, educate employees and staff. That figure will encompass past expenditures in the previous six months within those parameters with those expenditures to be approved by IRGC staff. Commissioner Allen seconded the motion.

Hearing no additional comments or questions, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-23)

Chair Sealock moved to Administrative Business. Mr. Ketterer stated that those organizations wishing to submit proposals requesting funds from the Horse Promotion Fund must have those requests into the IRGC office by February 14, 1997 so they may be considered at the March meeting. He moved on to the meeting site revisions. There was some discussion as to whether or not the March 6th meeting date would need to be changed. It was determined that the meeting date would remain March 6th. Mr. Ketterer stated that the March meeting would be held at the Gateway Holiday Inn in Ames, the April meeting will be at Harveys in Council Bluffs, and the May meeting will be at Ameristar in Council Bluffs.

Chair Sealock then moved to the Public Comment portion of the agenda. Charles R. Baumhover addressed the Commission regarding Prairie Meadows, and the cost to the Polk County taxpayers over the years. His concern is that RACI did not put up any more collateral than any other Polk County taxpayer, but feels they are acting as if they own the facility and believes they would like to take possession of the facility and reap all of the profits. However, the Polk County system is building a patronage system which he feels is dangerous. Mr. Baumhover feels that Polk County should never have been in the gambling business, and has suggested to the Board of Supervisors that

they petition the Legislature or lobby the Legislature to transfer the license from RACI to the County so that the County could then sell PM to a private entity. He feels that it would be in Iowa's best interests to remove Polk County from the gambling business, and RACI is attempting to claim something that they either could not, or would not, fund themselves. He reminded the Commissioners that even though RACI spearheaded the public referendum to permit casino-type gambling in Polk County, they did not make any provisions for the financing of it. In his opinion, taxpayers should be receiving more consideration than they have been in the issues surrounding PM. Mr. Baumhover stated that he would like to see two "regular" Polk County taxpayers on the RACI board rather than horse breeders.

Chair Sealock thanked Mr. Baumhover for his comments, and noted that the Commission simply enforces the laws but did not make them.

The Commission viewed Ameristar's tape relating to Project 21 at this time. Chair Sealock complimented Ms. Bell on the context/content of the tape, and advised the Commissioners that a copy was in the Commission office if they wanted to share it with any organizations or groups they might be addressing.

As there was no further business before the Commission, Chair Sealock called for a motion to adjourn. Commissioner Peyton so moved. Commissioner Allen seconded the motion which carried unanimously. The meeting adjourned at 12:45 PM.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS
SECRETARY

IOWA RACING AND GAMING COMMISSION
MINUTES
MARCH 6, 1997

The Iowa Racing and Gaming Commission (IRGC) met on March 6, 1997 at 8:00 AM at the Holiday Inn Gateway Center, US 30 and Elwood Drive, Ames, Iowa. Commission members present were: Rita Sealock, Chair; Nancy L. Whittenburg, Vice-Chair; and members Brad Peyton, Bill Hansen and Jackie Allen.

Chair Sealock called the meeting to order at 8:00 AM and requested a motion to approve the agenda. Commissioner Hansen moved to approve the agenda. Commissioner Allen seconded the motion which carried unanimously.

Chair Sealock requested a motion to move into Executive Session pursuant to Iowa Code Section 21.5(c) and (g) for the purpose of receiving advice from legal counsel and DCI background investigations. Commissioner Allen so moved, and Commissioner Peyton seconded the motion. The motion carried unanimously.

Following Executive Session, Chair Sealock asked for a motion regarding the minutes from the January 16, 1997 Commission meeting. Commissioner Peyton moved to approve the minutes as submitted. Commissioner Whittenburg seconded the motion which carried unanimously. (See Order No. 97-24)

Chair Sealock called on Frank Biagioli, Manager of the Iowa GamblingTreatment Program for the Department of Public Health, to give a brief report regarding the cooperation and support the program receives from the various licensees. Mr. Biagioli stated that the riverboat licensees have demonstrated a commitment to addressing problem gambling and have worked with local area providers, as well as his office, to improve the education process on this issue. The casinos display gambling treatment materials in various ways and locations to help get this message out. Several of the casinos stress responsible gambling in their advertising and display materials. Mr. Biagioli noted that many of the casinos in Iowa now offer self-banning to those individuals who recognize they have a gambling problem. Several of the facilities have adopted Project 21 principles. There is a strong emphasis by all licensees on preventing underage gambling. Mr. Biagioli noted that problem gambling experts across the country are very impressed by all that Iowa does regarding problem gambling. Mr. Biagioli thanked the Commission for keeping an emphasis on problem gambling.

Chair Sealock asked Mr. Biagioli if the Iowa Gambling Treatment Program had a working relationship with bordering states. Mr. Biagioli stated that some individuals from bordering states will seek help from Iowa's facilities; however, the program is set up to reimburse the providers for Iowa residents only. He went on to note that in most cases those providers are providing their service at almost no reimbursement as some of the bordering states do not have gambling treatment programs or the funding is very low.

Commissioner Peyton asked Mr. Biagioli if he had any new statistics indicating the number of problem gamblers in Iowa was on the rise, or if the number had plateaued. Mr. Biagioli indicated that he had not performed a new study since the 1995 survey, but indicated the figures probably were a low estimate in light of what has developed over the last two years due to the addition of three riverboats and the slot casinos at the racetracks. He noted that the calls to the Hotline show that the casino games make up about 73% of the activities for which people are seeking help compared to 53% the previous fiscal year. Mr. Biagioli stated that he was comfortable using the figures from the 1995 survey as a conservative estimate of the number of problem gamblers in Iowa.

Commissioner Hansen took a moment prior to the beginning of the excursion gambling boat license renewals to express his concern over the contract approval process. He noted that as he reviewed the renewal applications, his concerns were substantiated that the law requires the licensees to utilize Iowa vendors. Commissioner Hansen noted that some licensees were using as high as 72% non-Iowa vendors. He also noted a high utilization of oral contracts which causes him concern as there is no paper trail for the Commission to follow should a situation arise. Commissioner Hansen referred to Iowa Code Section 99F.7 which states: "The commission shall require that an applicant utilize Iowa resources, goods and services in the operation of an excursion gambling boat. The Commission shall develop standards to assure that a substantial amount of all resources and goods used in the operation of an excursion gambling boat come from Iowa and that a substantial amount of services and entertainment be provided by Iowans." Regarding the oral contracts, he noted that part of the rationale given in the rules for the Commission's approval process is to insure that gaming profits are not improperly distributed. Commissioner Hansen stated that he feels the oral contract process prohibits the Commission from determining whether or not there is a problem or not; and should a problem arise, there is little the Commission could do. He noted that Jack Ketterer, Administrator for IRGC, was attempting to address his concerns.

Mr. Ketterer noted that a meeting had been held with the licensees on Wednesday regarding Commissioner Hansen's concerns. He noted the possibility of the licensees submitting their purchasing policy annually with their license renewal application which would allow IRGC or DCI to follow up should a question arise regarding a specific contract. Mr. Ketterer stated that he would be contacting the licensees and requesting that they submit their purchasing policies. He feels these policies will satisfy Commissioner Hansen's concerns with respect to the Commission's obligations under the rule and statute.

Chair Sealock then called on Anthony Payne, Executive Director of Iowa West Racing Association (IWRA), and Jeff Terp, Vice President of Business Development for Ameristar, to address the license renewal for Ameristar II. Mr. Payne gave a brief report on what Ameristar indicated they would do if they received a license and what they have actually done. In the original application, Ameristar indicated they would spend $70 million on their complex; but they have spent $110 million to date. Additionally, they have opened a 160-room hotel and a Holiday Inn Express, with

140 rooms, is scheduled to open April 1, 1997 on the project site. The application indicated there would be two specialty restaurants in the complex; there are four restaurants on site. Ameristar's application indicated they would make charitable gifts totaling $1 million to the City of Council Bluffs which they have done. Mr. Payne noted that Ameristar has 1,242 employees of which 638, or 50%, are Iowa residents. He noted that figure is substantial because in the SMSA of 660,000 in the Omaha/Council Bluffs area, Council Bluffs only accounts for 13% of the population. Mr. Payne stated that for every $1 million in gross revenue nationally, 13 jobs are created; but for every $1 million at Ameristar, 19 jobs have been created.

Mr. Terp stated that Ameristar is pleased to be operating in Iowa, and considers the past year a success. He noted there are some improvements they would like to make, and continue to increase their market share and expand the total market.

Mr. Ketterer reminded all licensees that the cruising schedule begins on April 1, 1997 and runs through November. The statute requires licensees to complete 100 cruises in order to be able to operate dockside in the off season. He noted that the majority of licensees cruise Monday through Friday beginning the latter part of May. Mr. Ketterer cautioned the licensees that they should complete the required 100 cruises as early as possible to allow some leeway for high water problems.

Mr. Terp stated that Ameristar anticipates having problems with high water levels, and will probably attempt to cruise seven days a week whenever possible in order to complete the required 100 cruises as early as possible. From the various reports Ameristar is receiving from South Dakota, they expect the water levels to be as high or higher than they experienced last year. Mr. Ketterer noted that the Commission does not expect the boats to cruise if there is a safety concern.

Mr. Ketterer asked Mr. Payne to address the re-entry issue between IWRA and Ameristar. Mr. Payne stated that when the contracts between IWRA and Ameristar were signed, the re-entry issue was not addressed following the completion of the land-based facilities. After reviewing the situation, Mr. Payne has suggested to both Ameristar and Harveys that they take the attendance figures, which net out the re-entries, times $1.50 which becomes the numerator. If they divide by the total win (denominator), the result if 5% of AGR. Neither entity is agreeable with the percentage as they feel that figure could change. Mr. Payne noted that even though the win at both facilities is about even, attendance is approximately 25% lower at one facility. IWRA has requested an audit of the admission figures at both facilities to determine the efficiency of the re-entry process, and determine that the internal controls are being followed.

In response to Mr. Payne's comments regarding the re-entry issue, Mr. Terp stated that they would like to move to a percentage figure, but don't feel the proposed percentage is where they will be when the entire facility is open. He noted that the original contract drafted with IWRA did contain a percentage; however Harveys'contract, who signed with IWRA first, contained an admission tax

per person. Harveys' legal counsel asked Ameristar to change their contract to be identical to Harveys.

Hearing no additional comments regarding the renewal application for Ameristar, Chair Sealock called for a motion. Commissioner Allen moved to approve the excursion gambling boat license renewal for IWRA/Ameristar Casino Council Bluffs for Ameristar II. Commissioner Whittenburg seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-25)

Chair Sealock then called on Missouri River Historical Development, Inc. (MRHD) and Belle of Sioux City, L.P. regarding the license renewal application for the Belle of Sioux City (BSC). Don Malloy, a representative from Argosy Gaming Company, indicated he would answer any questions the Commissioners might have, but did not have a formal presentation. MRHD was not represented.

Commissioner Allen asked Mr. Malloy about the application submitted by Gaming Ventures, LLC to purchase the Belle of Sioux City. She also noted that the Commission had received a letter stating that Signature Management Company was interested in acquiring the boat. Commissioner Allen asked if these two companies are one in the same or different entities. Mr. Malloy referred these questions to Steve Norton, President of Argosy Gaming Company. Mr. Norton indicated that four different companies have been interested in the operation, but the company they have been negotiating with involves individuals from the Sioux City area, including the current general manager, John Pavone. He indicated that should successful negotiations be held, that company would be the one to file a formal application with the Commission. Mr. Norton stated that the boat would continue to operate, even if there was a change in the ownership. He indicated that he was not sure whether Signature Management and Gaming Ventures LLC were the same or not. He felt that Signature Management Company might be the management portion of Gaming Ventures LLC. Mr. Norton stated that his only involvement with the negotiations is to offer some advice on the structuring to ease a change over for Argosy, the non-profit organization, and the city.

Hearing no further comments, Chair Sealock requested a motion. Commissioner Peyton moved to approve the excursion gambling boat license renewal for MRHD/Belle of Sioux City, L.P. to operate the BSC. Commissioner Hansen seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-26)

Chair Sealock then called on Southeast Iowa Regional Riverboat Commission (SIRRC)/Catfish Bend Casinos, L.C. regarding their excursion gambling boat license renewal. Gary Hoyer, legal counsel for Catfish Bend (CB), Jim Rheinschmidt, President of SIRRC, and Bob Winkler, Assistant General Manager, came forward to address the Commission.

Mr. Rheinschmidt stated that the riverboat license has been very important to the region. He noted that most of the original goals established in the beginning are being met. They are capitalizing on the concept of riverboat gaming and natural resources which the riverfront provides. The admission fees which SIRRC receives are being used to pay for riverfront improvements and to enhance the economic development. When CB became the licensee in the area, they agreed to pay higher than normal admission fee per patron in order to allow the communities to retire the debts incurred to improve the riverfront areas. Additionally, they agreed to help with the riverfront improvements. CB has provided over $150,000 to various organizations and charities. Mr. Rheinschmidt stated that Ft. Madison, Burlington and Keokuk are doing the best they can with the monies they are receiving. He noted that Lee County receives 2% of the revenues, and is entertaining some tourism assistance. Des Moines County is entertaining a business and economic enhancement program with some of their funds. Fort Madison, Burlington and Keokuk received 32% of the annual revenues. Mr. Rheinschmidt noted that in 1996 the counties each received approximately $16,000, and the cities received approximately $263,000 each.

Chair Sealock asked if the recent mayoral election in Keokuk would have any effect on CB's operation in Ft. Madison and with SIRRC. Mr. Rheinschmidt indicated that they have not heard at this point what changes, if any, might occur due to the recent election, but are counting on the three Keokuk representatives to lead the way.

Mr. Hoyer advised the Commission that CB is in the middle of their expansion project which was approved last year. They will be investing approximately $8 million into a larger vessel and larger facilities. CB is currently negotiating with Ft. Madison and Burlington regarding some dockside improvements. Mr. Hoyer noted that approximately 80% of the 1997 contracts submitted to date are with Iowa vendors.

Commissioner Allen quoted a section of Section 5, Page 4 of the license renewal which states in part: "... Catfish agrees to moor the boat for operations in one or more of the Cities of Burlington, Fort Madison or Keokuk provided Catfish is able to obtain wharfage and docking agreements satisfactory to Catfish with the Cities, ..." She noted that in past renewal applications Keokuk had been excluded. Mr. Hoyer replied that CB has a contract to operate with SIRRC which is comprised of the three communities who have equal representation on the board. CB has agreed in their contract with SIRRC to operate out of one or more ports, but SIRRC has the ability to approve CB's schedule which currently includes Fort Madison and Burlington. CB operates out of Burlington in the winter and Ft. Madison in the summer. At the time that CB began operations, SIRRC had already made the decision to have the boat operate out of two communities due to economic reasons. Mr. Hoyer noted that negotiations with Keokuk to bring them back into the cycle have not been successful to date. CB hopes to open the new vessel in Ft. Madison at the end of the first week in May.

Mr. Rheinschmidt indicated that SIRRC included the restrictive language in the Operating Agreement with CB because they had been told that no one would come in and attempt to operate out of three communities. They directed efforts toward locating an operator to start on a smaller scale, and if the logistics could be worked out or the operation expanded, they would do so. During 1996, the Keokuk representatives on the SIRRC board requested that the restrictive language be removed from the contract with CB, and that was done.

Commissioner Allen then referred to a portion of Section 5, Page 3 which states in part: "... During the term of this Agreement, SIRRC will refrain from endorsement, approval of or licensure with any other excursion gaming boat operator, it being the intention of the parties that this Agreement is exclusive in nature." Mr. Hoyer stated that SIRRC as the sponsoring non-profit has agreed that CB would be the exclusive operator in the southeast Iowa pool.

Hearing no further questions, Chair Sealock requested a motion. Commissioner Whittenburg moved to approve the excursion gambling boat license renewal for SIRRC/Catfish Bend Casinos, L.C. for Catfish Bend Casino. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-27)

Chair Sealock called on Dubuque Racing Association (DRA)/Greater Dubuque Riverboat Entertainment Company, L.C. (GDREC) regarding the license renewal for the Dubuque Diamond Jo (DDJ). Bruce Wentworth, General Manager of DRA, stated that DRA endorsed the license renewal application. Jim Rix, Chief Operating Officer of DDJ, pointed out their appreciation of the Commission's approval for a larger vessel. They have increased the number of employees from 285 to 685 during the peak season, and doubled their payroll. GDREC has acquired 11 acres of land to be used for development. The work on an additional 575 parking spaces is being completed at the present time.

Mr. Ketterer asked Mr. Rix how he felt the Silver Eagle would affect the DDJ. Mr. Rix stated that he knew revenues were declining, and they were working hard to relocate to the eastern side of Illinois. He noted that the revenues for the Silver Eagle were less than $100,000 last month. He feels if the Silver Eagle were allowed to bring in a larger vessel and operate dockside there might be a slight impact on DDJ and Dubuque Greyhound Park (DGP), but feels they have established themselves very well and secured their niches in the market.

Hearing no further comments regarding the license renewal, Chair Sealock requested a motion. Commissioner Hansen moved to approve the excursion gambling boat license renewal for DRA/GDREC for the DDJ. Commissioner Allen seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-28)

Chair Sealock then called on IWRA/Harveys Iowa Management Company regarding the license renewal for the Kanesville Queen. Mr. Payne, Verne Welch, General Manager of the Kanesville Queen (KQ), and Art Hill, Controller, came forward to address the Commission. Mr. Payne provided the Commission with a brief comparison of what Harveys indicated they would do if given a license, and what they have actually done. Harveys originally stated their gaming complex would be in the $70 million range; they have spent approximately $115 million. The Convention Center, with 21,000 square feet, has opened and is doing very well. They have promised $2.5 million to the City toward a sports complex. Harveys also contributed $250,000 toward the National Western Historic Trail which is to be completed by the end of 1997. Mr. Payne noted that Harveys employs 1,129 individuals of which 621, or 55%, are Iowans. Harveys places their job advertisements in 29 different communities. Mr. Payne read excerpts from a letter Mayor Tom Hanafan had written to the Commission regarding Harveys' license. He went on to state that for every $1 million of revenue, Harveys has provided 16.4 jobs compared to the national average of 13.

Mr. Welch thanked the Commission for their support over the last year. He stated that he felt the Convention Center has done very well for them. They are pleased with the growth over the last year.

Chair Sealock asked Mr. Welch if he had any comments regarding the re-entry issue with IWRA. He noted that Harveys' original contract with IWRA contained a figure versus a percentage. At this time, Harveys would prefer to continue doing a daily count. They feel their counts and submissions are accurate.

Chair Sealock noted that Commissioner May had made a couple of suggestions to the licensees in Council Bluffs at the time the licences were issued to work with the Native Americans. Mr. Welch stated that Harveys has sent weekly recruiting letters to several of the reservations. One of the problems they have encountered is that most would need transportation to and from the facility which is cost prohibitive, but did note that they have 31 Native Americans currently employed at the facility.

Commissioner Hansen complimented Mr. Welch on Harveys significant investment and great operation, but noted that Harveys had purchased in excess of $6 million in meat and food from non-Iowa vendors. Mr. Welch stated that Harveys, per purchasing requirements, bid out their food and meat purchases. He noted that Aksarben Beef has been one of their biggest supplies as it is difficult for the vendors out of Des Moines to compete with their prices due to transportation costs. Commissioner Hansen stated that $3.5 million of the $6 million was from Missouri vendors. He wondered about transportation costs for that vendor. Art Hill, Controller, noted that the vendor is Pegler Sysco, and that the billing company is in Kansas City, but the service outlet is Lincoln.

Hearing no further comments, Chair Sealock requested a motion. Commissioner Peyton moved to approve the excursion gambling boat license renewal for IWRA/Harveys Iowa Management

Company for Harveys Kanesville Queen. Commissioner Whittenburg seconded the motion. Chair Sealock requested a roll call vote which passed unanimously. (See Order No. 97-29)

Chair Sealock then called on Riverbend Regional Authority(RRA) /Lady Luck Bettendorf, L.C. regarding the license renewal application for Lady Luck Bettendorf (LL). Shawn Ellis, General Manager for LL, advised the Commission that LL is seeking approval of a revised cruising schedule. They originally requested to cruise from 7:30 to 9:30 AM, but due to construction traffic at their site, they have submitted a request to cruise from 6:30 to 8:30 AM. Mr. Ketterer indicated the cruising times would cause some problems for the DCI. Mr. Ketterer asked how many individuals normally participate in the cruise. Mr. Ellis indicated anywhere from 20 to 40 individuals.

Chair Sealock asked if a representative from RRA had ever addressed the Commission. Curt Beeson, legal counsel, advised Chair Sealock that Patti Ramiscetti made a presentation to the Commission just a few months ago.

Commissioner Hansen stated that he felt the license renewal application was incomplete in terms of the contracts as they merely gave a list of vendors, they did not include the Request for Contract Approval form, no amounts are provided, and no indication as to whether the contracts are written or oral. Mr. Ellis stated that he had all of the details with him. Commissioner Hansen asked why they were not submitted with the application. Mr. Beeson stated that the details were not submitted with the application as LL has dealt with the issue twofold - probably over-disclosing on the contracts. He directed Commissioner Hansen's attention to the agenda for today's meeting. All of the contracts listed on today's agenda are also included on the list provided with the license renewal application. When LL submitted their application, they submitted all of the vendors which were approved last year as well as the ones they anticipate using this year. If a specific contract exceeds $50,000 they bring that contract to the Commission's attention. The list included in the renewal application includes the vendors with contracts over $50,000 which were approved last year, and a supplemental list of the new vendors approved, and all of the new vendors to be approved are in the contract submissions for consideration under the Contract Approval section of today's agenda except for WMS which has been withdrawn.

Hearing no further comments, Commissioner Hansen moved to approve the excursion gambling boat license renewal for RRA/Lady Luck Bettendorf, L.C. for LL subject to the appropriateness of the summary of the contract approval forms submitted. Commissioner Allen seconded the motion.

Commissioner Peyton asked who would determine the appropriateness of the contract summary sheets submitted by LL. Mr. Ketterer suggested that staff determine the appropriateness. Commissioner Hansen stated that he was mainly concerned that all licensees be treated the same. He amended his motion to state the license renewal was approved subject to staff's approval of the summarized contract approval forms.

Chair Sealock noted that the motion needed to address the cruise time issue as well. Commissioner Whittenburg suggested that the motion be "... subject to staff and the licensee working out the cruise schedule for the upcoming year." Commissioner Hansen agreed with the proposed amendment. Commissioner Allen also agreed with the amended motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-30)

Chair Sealock then called on the Upper Mississippi Gaming Corporation/Gamblers Supply Management Company (GSMC) regarding the license renewal for Miss Marquette. Randy Lenth, representing the Upper Mississippi Gaming Corporation and the City of Marquette, asked for the approval of the license renewal as the Miss Marquette riverboat continues to be a major economic force in the community. Commissioner Whittenburg stated that she had seen several new sidewalks in Marquette last fall and wondered if they could be attributed to the revenues received by the City from the boat. Mr. Lenth stated that was correct. He noted that Marquette is currently working on a housing program to rehabilitate some of the older homes.

James Starr, General Manager of the Miss Marquette, stated that they will continue to make every effort to contribute to the community and attempt to direct as much of their business toward Iowa businesses as possible.

Chair Sealock noted that she was very impressed with the safe access to the riverboat from the land based facilities.

Commissioner Whittenburg complimented them on their scheduled cruise time of 11:00 AM to 1:00 PM. She stated that she likes the idea that a riverboat is out cruising during the daytime in order to allow individuals to view the river scenery. Mr. Starr noted that in their application they requested to begin cruising on April 1, 1997; however, they have applied to the Department of the Army for a modification due to the Higgins clam concern. They have received a letter stating that the Fish & Game objected to them starting their cruises on April 1st; however, the letter indicated that another study could be done as the ice is leaving the river. He anticipates that the study will be done within the next one-two weeks. If an agreement can not be reached allowing them to begin cruising on April 1st, they will return to the same cruising schedule they had last year in which they began on July 6th.

Chair Sealock asked if they had a problem complying with the 100 cruise requirement starting that late in the season. Mr. Starr indicated that it was close, but they had about 15 days at the end as a cushion. They were able to cruise just about every day.

Chair Sealock noted that when the Commission met in Marquette, she and other Commissioners noted that the parking lot was full of Wisconsin buses. Mr. Starr stated they are directing their

marketing efforts toward Wisconsin and Minnesota. He noted that the boat operators to the south have directed their marketing efforts to the east and don't want to compete with them for those customers.

Hearing no further comments, Chair Sealock requested a motion. Commissioner Hansen moved to approve the excursion gambling boat license renewal application for Upper Mississippi Gaming Corporation/GMSC for the Miss Marquette. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-31)

Chair Sealock then called on Clinton County Gaming Association (CCGA)/Mississippi Belle II, Inc. regarding the license renewal for Mississippi Belle II (MB II). James McGraw, President of CCGA, requested that the Commission renew the license for the MB II. Ken Bonnet, President of MB II, distributed copies of a newspaper advertisement setting forth what the gaming revenues of $3.1 million have been used for by the non-profit since the boat opened. Mr. McGraw noted that the local college, Mt. St. Clare, approached them a year ago seeking funds to build a $3.5 million communications center which will also be used as a convention center. The MBII and CCGA each contributed $500,000 to the cause. Ground breaking will occur in April.

Mr. Bonnet advised the Commission that MBII will cruise between 1:00 and 3:00 PM, which is the same schedule they have had for the past two-three years. Commissioner Whittenburg noted that she liked their cruise time. Mr. Bonnet noted that the time was popular with the numerous motor coaches which come to the facility.

Hearing no further comments, Chair Sealock called for a motion. Commissioner Peyton moved to approve the excursion gambling boat license renewal for CCGA/MB II, Inc. for the MB II. Commissioner Allen seconded the motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-32)

Chair Sealock called on Riverboat Development Authority (RDA)/The Connelly Group, L.P. regarding the renewal application for The President. Mark Lohman, General Manager of The President, and Mary Ellen Chamberlin, President of the RDA, were present to answer any questions. Mr. Lohman advised the Commissioners that since last year several major infrastructure improvements have been made: the return of The President from its 5-year Coast Guard inspection and major refurbishment; the completion of two new parking lots adjacent to the downtown location; expanded a couple of other parking lots; and completed some new roads to the site which is spurring some additional redevelopment downtown. The new porte cochere was opened last Friday.

Ms. Chamberlin advised the Commission that this would be her last licensing meeting. She will be leaving the Board in January, 1998. The non-profit board has experienced its first major turnover earlier this year when three of the original members completed their term limits. She noted that the

non-profit has accomplished the following in the nine years since their inception: Spent almost $12 million in the Davenport community since October 1991, have partnered with 167 non-profit agencies or groups within the community, five school districts representing 75 attendance centers, the area education agency, seven universities or colleges and fifteen communities. They have been able to make a difference in the quality of life for the people in Scott County - changed the way the homeless are treated, partnered with United Way to develop a new way for individuals to access referral services of various agencies within the communities, and have helped bring technology into the area schools.

Chair Sealock asked Ms. Chamberlin if she was a paid employee. She stated that she was not; that none of the board members are paid. The non-profit office is furnished to them by The President through their contract. The grant program is operated on a budget of approximately $27,000 per year. RDA has received approximately 160 applications for the money that is currently available for distribution. They have already distributed $1.5 million, and Ms. Chamberlin feels they will have $1.5 million for this distribution as well.

Hearing no further comments, Chair Sealock requested a motion. Commissioner Whittenburg moved to approve the excursion gambling boat license renewal for RDA/The Connelly Group, L.P. for The President. Commissioner Hansen seconded the motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-33)

Chair Sealock then moved on to a request for approval by GDREC to distribute interest payments to passive investors as provided for in the Operating Agreement. Mr. Rix noted that this request is similar to a request which was before the Commission last spring. This request would allow GDREC to pay interest for the past two years.

Hearing no further comments, Chair Sealock requested a motion. Commissioner Whittenburg moved to approve the request to distribute interest payments to passive investors as it is similar to a previous request. Commissioner Allen seconded the motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-34)

Chair Sealock called on IWRA/Bluffs Run Casino (BRC). Mr. Payne noted that the greyhound track has been in operation for 11 years, and the casino is embarking on its third year. BRC has 1,200 employees, 85% are full time of which 65% are Iowans. BRC concentrated on improving the employee benefit package this past year. Mr. Payne noted that 23% of payroll dollars were matched by benefit dollars. BRC, Harveys and Ameristar contribute to the Iowa West Foundation (IWF) which distributed grants totaling $7.2 million - 110 grants in 53 communities. Nine of the grants totaling $580,000 went to Carter Lake and Little Sioux, Iowa. Carter Lake received $500,000 for the construction of a Boys/Girls Club. The funds given to Little Sioux were used to replace

destroyed fire fighting equipment. BRC, Ameristar and Harveys provide 14.5 jobs for every $1 million of gaming revenue. They employ 850 minorities, or 24% of the workforce.

Barry Sevedge, Director of Operations for BRC, stated that the repaving of the existing parking lot would be completed the following week. He noted that the RV park will not be completed until late summer instead of May as anticipated due to the wet spring.

Mr. Sevedge advised the Commission that BRC is continuing to work with staff to address the underage gambling problem. Local media has cooperated with them in publicizing the the new city ordinance and Iowa law. Two-thirds of the employees have signed the BRC "Zero Tolerance" policy form during weekly orientation sessions. Additionally, this statement will be added to the BRC Employee Handbook. Public service announcements will begin next week. He stated he would have a more complete report on their efforts in this area at the April meeting. Mr. Sevedge stated that underage attempted entries have dropped significantly.

Mr. Sevedge stated that BRC is in the process of negotiating a new contract with United Tote to upgrade their system similar to the system approved for Prairie Meadows. The contract will be before the Commission at the April meeting. He noted that the heirs of the owner of Post Time Publications, their program printer, has decided to discontinue the business. BRC is in the process of appraising the equipment, and probably will be bringing a contract before the Commission to purchase the equipment which would allow them to print their own programs.

Commissioner Hansen noted that BRC had submitted contracts totaling approximately $4.1 million for food purchased outside of Iowa, including an agreement to purchase 80% of their foodstuffs from Minnesota. He also stated that Iowa is considered the second largest insurance capital in the nation, but noted that BRC had submitted contracts totaling around $500,000 outside of Iowa. Mr. Sevedge noted that the Minnesota address is a billing address. BRC purchases a large amount of their foodstuffs from Pegler Sysco which is out of Lincoln. They are under the same cost constraints as Harveys in purchasing foodstuffs from Des Moines, nor does BRC have as much storage room which requires daily deliveries. Regarding the insurance, Mr. Sevedge noted that originally most of the insurance was purchased through Redlands Insurance which has been merged with Acceptance Insurance. They moved their offices across the river which made their address Omaha. Eric Wilson, noted that the claims people, which he deals with on an almost daily basis, are housed in Iowa. Commissioner Hansen stated that he feels Council Bluffs could really use the economic development. Commissioner Sealock noted that the insurance company is occupying a large amount of space in a downtown mall. Mr. Wilson noted that it was 75,000 square feet.

Mr. Ketterer noted that he had made several visits to the facility over the last couple of months and had noticed the heightened awareness among employees regarding the underage gambling problem.

He also noted that BRC had done an excellent job of keeping IRGC staff advised during a management change.

Chair Sealock noted that the area newspapers have been very cooperative in providing news coverage on the underage gambling problems. Mr. Sevedge stated that BRC has a very good relationship with the city on this particular issue. Mr. Wilson emphasized that the City has been cooperative with them in following through with the issuance of citations to underage gamblers.

Hearing no further comments regarding the license renewal, Chair Sealock requested a motion. Commissioner Hansen moved to approve the racetrack gambling enclosure license for IWRA/BRC. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-35)

Chair Sealock then moved to BRC's request to change their live racing schedule. Mr. Wilson noted that BRC is requesting to move the 7:15 PM Tuesday and Thursday performances to matinees at 4:00 PM to enhance their outgoing simulcast signal. They have been able to sell their signal to three greyhound tracks and a horse track. BRC will be importing performances from Gulf Greyhound, and has increased their export signal to eight locations

Mr. Ketterer commended BRC for expanding their signal. He asked if they would consider dropping the takeout on their exacta wager from 24% to the 19-20% range. Mr. Wilson stated that the simulcast contracts presented to the Commission were based on BRC's current takeout percentages. BRC has not formally discussed reducing their takeout percentage, but feels they may based on PM studies. Mr. Sevedge indicated that he would like an opportunity to see what effect the simulcast changes have before introducing any other variables.

Linda Vanderloo, Director of Racing/Administration for IRGC, expressed some concerns regarding a sufficient number of lead outs during the school year for the matinees, how BRC was going to notify the public of the change in racing times, and if these changes in the live race schedule adversely effect live racing product, what is their plan of action. She suggested that if the changes to the live racing schedule are approved that they start on April 1, 1997.

Mr. Wilson advised the Commission that he had discussed these concerns with Ms. Vanderloo. He noted that BRC did not have a problem with an April 1 effective date for the changes if they are approved. He noted that he had been assured by BRC's Director of Racing that there would be sufficient lead outs. As far as advising the public of the pending changes, news releases will be sent out, internal and external signage, tags on printed programs to show the schedule change, table tents inside, daily advertisements in the World Herald, casino announcements, and a message will be added to their telephone messages.

In regard to Ms. Vanderloo's concerns regarding the live racing change, Mr. Wilson noted this is an experiment in response to the Commission's interest in BRC simulcasting their product. He noted that BRC has received tremendous cooperation from the Iowa Greyhound Association (IGA). He is hopeful the exportation of their signal, and possibly adding more, will increase the pool size which will generate more interest in live racing. Mr. Wilson also hopes the importation of signals from other tracks at times when they are not racing will also help to generate interest in the live racing product at BRC. The hope is that this will not adversely effect the live racing, but they will have to analyze the process once it is started.

Ms. Vanderloo recommended approval of the requested changes to the live racing schedule. Hearing no further comments or questions, Chair Sealock requested a motion. Commissioner Allen moved to approve the live racing schedule change. Commissioner Hansen seconded the motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-36)

Chair Sealock moved to the simulcast contracts submitted by BRC. Mr. Wilson noted that BRC is requesting approval to export their signal to Raynham-Taunton Greyhound Park in Massachusetts, Phoenix Greyhound Park in Phoenix, Arizona, and LesBois Park in Boise, Idaho. They will continue under their existing contracts with Gulf Greyhound and Southland; however, they will increase the number of performances which they export. He noted that the Sunday matinee exported to Gulf Greyhound has about four times the handle as the Wednesday signal as they are competing with live racing at Gulf on that day. Mr. Wilson stated that Raynham has stated they will more than likely take all of their performances

BRC has also submitted import simulcast contracts with Gulf Greyhound Park, LaMarque, Texas, Raynham-Taunton GP, Phoenix GP, and Southland Greyhound Park in Memphis, Arkansas. These signals have been scheduled so that they will not directly compete with BRC's live product, although there could be a little overlapping with Gulf Greyhound on some nights.

Hearing no comments or questions regarding the simulcast contracts, Chair Sealock requested a motion. Commissioner Peyton moved to approve the simulcast contracts submitted by BRC. Commissioner Whittenburg seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-37)

Chair Sealock moved to the Escrow Fund. Mr. Wilson stated that he had had some preliminary conversations with Jerry Crawford, legal representative for the IGA. They have agreed that some of the simulcast costs will be paid from the interest on the escrow account. A meeting will be held no later than April 30th in order to arrive at a consensus regarding the escrow fund so that a report can be given at the May meeting.

Ms. Vanderloo stated that she would like to have BRC and IGA present a game plan to the Commission at the May 15 meeting so the Commission can be assured that the November 1, 1997 date will be met.

Chair Sealock noted that this was not an action item. She advised those in attendance that the Commission would break for lunch until 1:30 PM.

After reconvening the meeting, Chair Sealock called on Dubuque Racing Association (DRA)/Dubuque Greyhound Park & Casino (DGP&C) regarding the 1997 Season Approvals. Mr. Wentworth, General Manager of DGP & C, presented the 1997 Season Approvals for the next live racing season which will commence on May 1, 1997 and run through October 26, 1997. DGP&C will hold six performances per week on Thursday, Friday and Saturday at 7:30 PM, and afternoon performances on Wednesday, Saturday and Sunday at 1:00 PM. There will be additional holiday performances on May 25th at 7:30 PM; May 26th at 1:00 PM; July 4th at 1:00 PM, August 31st at 7:30 PM, and September 1st at 1:00 PM. Mr. Wentworth noted they would have 14 kennels returning which were at the facility last year; ten of which are Iowa-based kennels, and nine of those ten are eastern Iowa-based kennels. DGP&C will be making several improvements to the kennel compound, improving parking lots, and will return to placing emphasis on the racing portion of the facility.

Chair Sealock called on Ms. Vanderloo for her comments relating to DGP&C's season approvals. She noted that the season purses will be 4% of the live wagering handle; with supplemental purse dollars coming from simulcast wagering. The IGA and DGP&C will present a purse supplement agreement from casino revenue to the Commission in April. Ms. Vanderloo recommended approval of the minimum purse supplement and the purse supplements for Iowa-breds.

Regarding the stewards, DGP&C has submitted the name of the individual who held that position last year. Approval was recommended. They have also requested that another individual be allowed to serve as a back-up. Ms. Vanderloo recommended approval with some additional training, submission of the required eye exam and compliance with licensing requirements.

Ms. Vanderloo recommended approval of the racing officials/department heads pending completion of background investigations, and the grading system. Regarding the equipment for the meet, DGP&C has contracted with the same companies as last year. With regard to the photo finish equipment, they are experimenting with digitized photo finish system. She requested that staff be allowed to give final approval as to the quality of the product prior to DGP&C utilizing the equipment. She recommended approval of the Security plan and certification as to contracts and financial documents contained in the season approvals. (Security plans are considered a work in progress, and if changes are warranted, they would be worked out with staff.)

Ms. Vanderloo advised the Commission that the number of kennels is down to fourteen with 700 greyhounds as compared to fifteen kennels with 900 greyhounds last year. Each kennel will be required to have 50 greyhounds, down from 60 last year. She requested assurance that DGP&C would have sufficient greyhounds to fill the race cards. Mr. Wentworth noted that DGP&C has raced with these numbers previously, that with six performances per week, they will have sufficient numbers of greyhounds. He noted that the IGA also recommended these changes.

Hearing no further comments, Chair Sealock requested a motion. Commissioner Whittenburg moved to approve the 1997 Season Approvals submitted by DGP&C with the conditions stipulated by Ms. Vanderloo. Commissioner Hansen seconded the motion. Commissioner Peyton asked if the motion included contracts, or if that was a separate item. He was advised that it was a separate item. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-38)

Chair Sealock moved to the next agenda item - Racing Association of Central Iowa (RACI)/Prairie Meadows (PM). Bob Farinella, General Manager of PM, advised the Commission of the reconfiguration of the Grant Review Committee within the Board of Directors which was expanded in order to enhance representation on distribution of charitable funds. Six members from the community have been added to the Grant Review Committee. One of the new members, Kathy Berry from Community and Rural Development for the Iowa Department of Economic Development, advised the Commission that department staff would be working with the RACI staff to help provide management assistance to the grant programs. She noted that the investments would be available to the smaller rural communities in Iowa. The money provided by RACI will be used to support and promote day care centers, senior centers, community facilities, housing developments, downtown revitalization, new, affordable rental units, restoration of historic buildings, and recreational sites to name a few.

Mr. Farinella indicated RACI/PM was ready to address any questions the Commission may have regarding the 1997 Operating Budget. Mr. Ketterer asked Mr. Farinella to review the budget with the Commissioners, highlighting the changes from the proposed budget which was submitted earlier. Mr. Farinella stated that capital expenditures immediate needs construction has been put on hold at this time as Polk County is trying to determine the real estate value of the facility for possible sale. The training track has been eliminated at this time based on the same reasoning. Changes were made to the operating expenditures involving the purchase of capital equipment thereby saving lease expenses. The County and RACI did agree that new tote equipment would be purchased. The purse structure has remained in an approved status.

Commissioner Whittenburg asked Mr. Farinella what PM would do without due to the $4 million cut from the planned capital expenditures. Mr. Farinella stated that the immediate needs project would have provided current employees with adequate space to perform their duties, provided additional ease of access for handicapped patrons and patrons in general, enhanced food and

beverage operations by converting the third floor into a full buffet operation with a restaurant and lounge, and moved administrative support staff to new a building. Commissioner Whittenburg expressed her displeasure with the removal of this portion of the capital expenditures. Additionally, Mr. Farinella stated that funds for 1998 purses will not be escrowed during 1997 as Polk County felt that was not necessary due to the cash flow position of PM. The funds which would have been escrowed for 1998 purses, approximately $9 million, will go to Polk County. The RACI Board had recommended the repayment of several bankruptcy creditors in the amount of $4.6 million. The County has decided to shoulder the responsibility for the repayment of those debts.

Commissioner Peyton asked Mr. Farinella what the depreciation was on the facility. Mr. Farinella stated that he did not know, but that the facility was constructed in 1989, and is currently valued at $37 million for tax purposes.

Commissioner Peyton stated that he was not going to quibble over numbers, as the procedure was more important to him. He noted that the Commission has expressed concern over the amount of control Polk County exercises over PM. He stated that the charitable contributions are a disgrace in light of what other licensees have done for their communities/counties. Commissioner Peyton stated that it was the Commission's responsibility to make sure that PM was in charge of its own destiny, particularly since the County has presumably been reimbursed all of the funds invested in this project. RACI/PM needs to step up and exercise control. He feels there has been a lack of control on RACI's part and too much involvement by the County in the budget process. Additionally, Commissioner Peyton questioned whether the Commission had a responsibility to consider the operating budget since they have already approved the purses. He stated that he would prefer not to consider the operating budget as he considered that to be an endorsement of the process.

Chair Sealock asked Jeff Farrell, Assistant Attorney General for the IRGC, for his opinion. Mr. Farrell stated that the Commission needed to approve the contracts and any contracts that may be included with the budget, but was not sure that applied to the budget itself. Commissioner Peyton noted that contracts could be considered under the normal contract approval basis. Mr. Farrell stated that each line of the budget could contain a different contract that applies to that budget item. Commissioner Peyton noted that the Commission does not approve a budget for any other licensee, and feels to go ahead and approve the budget sends the message that the Commission approves of the process. He feels the process was started as a way to solve a problem revolving around the financing of the facility. Mr. Farrell noted that the Commission may still want to receive copies of the budget as they may want to review it to determine other issues such as control. Commissioner Peyton concurred, and feels the current process highlights the lack of control by the licensee. Commissioner Peyton stated that he had some serious concerns as to whether or not RACI was in control of the license. Chair Sealock asked if PM would be able to operate if the Commission did not approve the budget. Commissioner Peyton statd that license renewal is not an issue at this time; but will come before the Commission in September.

Commissioner Hansen stated that he felt the 1997 operating budget as presented is informational, and the Commission has learned that RACI and Polk County have reached an agreement. He noted that a year ago Polk County reduced the amount RACI had proposed for charitable contributions, but noted that the current operating budget shows the County engaging in charitable contributions which he feels is a responsibility of RACI as the licensee, not the County. Mr. Farinella noted that charitable contributions were reduced from $2 million to $300,000 for 1995 with the specific purpose of paying off the debt on the facility in 1996. When developing the 1997 budget, RACI budgeted $3 million based on the information available to them as to what other licensees had provided to charitable organizations. Mr. Farinella noted that even though RACI has $3 million, the amount transferred to Polk County is available from the County for the benefit of the community and county as a whole. Commissioner Peyton noted that the County is a legitimate beneficiary of the funds, but questioned who was making the decision that the funds would go to the County - the licensee or the County. He stated that he is more concerned with procedure versus the amount of money or who gets the money. He questioned whether this issue would be an impediment during the license renewal in September. Commissioner Peyton stated that he would like to see this issue resolved prior to that time.

Chair Sealock called for a motion regarding the 1997 Operating Budget. Mr. Farrell suggested that Chair Sealock ask Mr. Farinella if he was asking for approval of the 1997 Operating Budget. Mr. Farinella stated that he felt the Operating Agreement between Polk County and RACI requires that the budget be submitted to the Commission for their approval. Chair Sealock requested that Tom Flynn, legal counsel for RACI/PM, come to the podium. Mr. Flynn noted that when the Operating Agreement was negotiated, a Commission representative stated that the Commission wanted to see the approved budget agreed to by RACI and County before it became fact so they have always felt the Commission had the authority to approve the budget.

Commissioner Peyton stated that he felt the Commission should continue to receive copies of the operating budget as it has been very instructive in showing how much control the licensee is exercising over the operation; however, he does not feel it is necessary for the Commission to approve the budget. Mr. Flynn stated that if the Commission elects to pass on approval or rejection of the budget, RACI would still have an agreement with the County under the Operating Agreement and will proceed.

Chair Sealock called for a motion regarding the RACI/PM's 1997 Operating Budget. Commissioner Hansen asked if the Commission could acknowledge receipt of the budget. Commissioner Hansen moved to acknowledge receipt of the budget. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-39)

Chair Sealock moved on to the approval of the racing officials and department heads for the 1997 Thoroughbred meet. Mr. Farinella turned the floor over to Darron Heldt, Director of Racing for

PM, who stated that all of the racing official positions had been filled. He advised the Commission that the Association Steward, Dennis Kochevar, has been hired as the State Steward, and has been replaced by Johnnie Johnson, a steward from Oaklawn Park. Chair Sealock called on Ms. Vanderloo for her comments. Ms. Vanderloo recommended approval of all racing officials and department heads pending completion of the DCI backgrounds.

Hearing no further discussion, Chair Sealock requested a motion. Commissioner Peyton moved to approve the racing officials and department heads for the 1997 Thoroughbred Meet as submitted by PM subject to the completion of background investigations. Commissioner Allen seconded the motion which carried unanimously. (See Order No. 97-40)

Chair Sealock moved to the approval of the pari-mutuel takeout and a report on Dr. Richard Thalheimer's findings. Mr. Ketterer noted that when the Commission granted the racing dates last fall, it was contingent upon IRGC receiving additional appropriations to provide for veterinarians, stewards and drug testing through Iowa State University. He went on to state that IRGC's budget has come out of legislative committee and the additional package to cover PM's increase in racing dates has been decreased by $50,000. This may result in a small reduction in the number of raceing dates.

Mr. Farinella advised the Commission that PM has reviewed the elasticity philosophy of takeout, and hired Dr. Richard Thalheimer to help them with some economical and statistical studies that had been done by the racing industry. The bottom line on the elasticity philosophy is that if you lower your price, you will sell more product so that net revenue profits from the operation will increase. The studies which have been done were done in jurisdictions where the study involved an increase in the takeout percentage, and its negative effect on handle. PM is assuming that philosophy will apply in reverse direction and has some data indicating that is true. Mr. Farinella stated that PM has taken a strong look at their takeout percentages. He went on to note that racetracks nationally have been very reticent to apply economic theory. In reviewing the data and their own program, PM decided to lower their takeout percentage on their win-place-show to 14% from the present 18% level. This decision was precipitated by a report from Dr. Thalheimer which indicated that reducing the takeout to 14% would maximize their net revenues and increase handle. PM will study the effects of the takeout reduction on one-horse wagers before deciding whether to apply it to their other wagers.

Mr. Ketterer applauded PM on the takeout reduction. He indicated this is the lowest in the industry. In the report submitted to IRGC by PM, it showed the takeout reduction would bring a 3.44% increase in the bottom line. He went on to state there was additional data which showed that if a two-horse or two race wager were reduced from the current rate of 24%, the highest allowed by law in Iowa and higher than most of the tracks in the U.S., to 19-20%, the increase in the volume of wagering would result in an increase on the bottom line of 14-20% which is considerably greater

than the 3.44%. He would have liked to see them reduce the takeout to only 19-20% which would put them in the mainstream of the majority of the tracks. Mr. Ketterer stated that the only reason he had been given that PM was reluctant to address the takeout issue with the simulcast tracks is that these tracks may be reluctant to continue to simulcast PM because of another drop in takeout.

Mr. Farinella concurred with Mr. Ketterer's statements. He went on to note that as part of their evaluation of the percentage, they were very concerned about their ability to continue to export their live signal to as broad a base nationally as possible. They determined that any change in their two or three-horse wager at this time could jeopardize their ability to enter those locations. Mr. Farinella stated that in building for the future, it is important for PM to get their signal out, become nationally recognized, and show the nation the quality of racing that is being developed at PM. They felt that the lower takeout percentages on their exotic wagers would handicap their ability if exporting their signal.

Commissioner Whittenburg asked if PM was committed to lowering other takeout percentages after having an opportunity to review the effects of reduced takeout on the win-place-show wager. Mr. Farinella indicated they are going to work with Dr. Thalheimer to evaluate synergy in the casino area from the live racing program. He stated that if they get positive results, PM would not be adverse to making other changes. Mr. Ketterer stated he felt the attractiveness of PM's signal was the evening time slot and PM willingness to reciprocate by taking a receiving track's signal. He felt the takeout ranked below those two elements in the decision to take PM's signal.

Chair Sealock informed Mr. Farinella that the Commission would be watching the PM figures. Mr. Farinella stated that PM has to match the market and availability. If you are not well known in the industry, the receiving track wants to know what their benefit will be. Mr. Farinella indicated that he felt some of the statistical data from PM regarding the effects of the reduce takeout would end up being used nationally.

Hearing no further discussion, Chair Sealock requested a motion. Commissioner Whittenburg moved to approve the reduction in the takeout on the win-place-show wager at PM. Mr. Farinella advised the Commission that when percentages are changed on the slot machines, they do not request approval from the Commission. He felt this was more of an information exchange versus an approval item. Mr. Ketterer stated that the takeout approval was part of the 45 day season approval. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-41)

Chair Sealock moved to the last agenda item for RACI/PM - a progress report on an agreement regarding the use of the facility and relationship with Polk County after the debt on the facility is paid. Mr. Ketterer provided the Commissioners with some information from a meeting between Liza Ovrum, Asst. Polk County Attorney, Mr. Flynn and himself. He stated that after reviewing the

Operating Budget, they discussed what the groups had accomplished on a long term basis, and all were in agreement that not much had been accomplished. Ms. Ovrum noted that Polk County is in the process of obtaining appraisals on the facility, and that they are waiting for a ruling from the IRS regarding the effect a sale would have on the tax-exempt status of the bonds. The IRS has changed the rules with respect to that issue, and it is still being investigated by bond counsel. Ms. Ovrum feels this information would be available by May, unless there were specific requirements in the IRS ruling which could take another six months. All parties indicated they were in agreement that the parties needed to meet and resolve all the issues in order to avoid going through this process every year regarding the budget. All parties agreed that RACI either needs to enter into a straight landlord/tenant arrangement with the County, buy the facility themselves if the County decides to sell it based on the information they receive, or if Polk County decides to sell to someone other than RACI, that RACI will not stand in the way of that sale.

Ms. Ovrum concurred with Mr. Ketterer's statements, and advised the Commission that Florence Buhr, Chairperson of the Polk County Board of Supervisors was present at the meeting. Ms. Ovrum stated that Ms. Buhr had expressed her strong commitment to work and negotiate with RACI to reach a new Operating Agreement. Ms. Ovrum indicated that the sale issue is much more up in the air due to the tax questions.

Commissioner Hansen returned to the charitable donations by the County. He noted that one of the issues troubling him, after examining the law and the manner in which the legislature created the law, is that the Legislature was very specific in setting up non-profit organizations which would channel donations. It bothers him that a public entity engaging in the distribution of charitable funds, as he feels they are, is subject to criticism, valid or not. Ms. Ovrum replied that the County has been involved in economic development projects before and after PM, and make contributions through hotel/motel receipts. She noted that a large part of the County's function is to care for the poor, mentally ill, developmentally disabled, and mentally retarded. Ms. Ovrum went on to state that Polk County contributes large amounts to low income housing within the community. She does not feel it is a departure for the County to make charitable donations. Ms. Ovrum noted that Polk County has decided to use only a portion of the money received from PM in that fashion. Commissioner Hansen stated that the possible recipients listed in a newspaper article were beyond the purview of those areas mentioned by Ms. Ovrum. Commissioner Hansen stated that the transfer connection aroused some concern on his part.

Commissioner Peyton stated that this particular issue has been on the Commission's agenda for at least the past year at the request of former Commission member Dick Canella. Initially there was some progress made; however, that has seemed to come to a standstill. He went on to state that he feels Polk County and RACI/PM have a very short time frame in which to resolve this issue - at least by the time the license is up for renewal. The Commission is now looking at a situation where a significant transfer of funds has occurred to the County from the facility. Previously, the major

concern was the repayment of the debt, which has occurred. He restated his belief that this issue needs to be resolved fairly quickly.

Chair Sealock stated that this has been an issue on the Commission agenda for more than a year. She noted that she is encouraged as there seems to be a better exchange of information between the two parties.

Ms. Buhr responded to Commissioner Peyton's comments. She stated that Polk County and RACI had reached agreement on the operating budget in January. She noted that other County supervisors, as well as herself, have met with RACI board members one-on-one or two-on-two due to public meetings laws. She felt the negotiations were very amicable for the 1997 operating agreement. She agreed with Mr. Farinella's comments regarding the charitable contributions and the figure used in putting together the operating budget. Ms. Buhr stated that Polk County and RACI recognize that charitables may be two different issues as it relates to privately owned gaming facilities. She stated there have been initial negotiations regarding some kind of a lease agreement, that it would be better for them as a County, and the Commission would look more favorably on that and RACI. She has made the negotiation of a lease agreement between Polk County and RACI one of her top priorities for the year.

Addressing Commissioner Hansen's concerns, Ms. Buhr stated that some of those entities would have received those funds from the general fund, Polk County just decided to use some of the funds from PM as they have for economic development in Polk County and other counties with the funds provided for Highway 5.

Mr. Farinella advised the Commission that during a meeting of the Gaming Association of Iowa, the lobbyist for Polk County was present and informed the group that his objective was to take the license from RACI and to remove all horsemen from the RACI Board. It is his opinion that there seems to be some other political pressures in process in addition to the forthright negotiations which have been occurring with Polk County.

Chair Sealock agreed that these issues should be discussed in the open. Commissioner Peyton asked if the County would like to respond to Mr. Farinella's last statement.

Ms. Buhr stated that was not a priority of Polk County. Polk County has two different groups of lobbyists - one for human needs and one group they have hired to deal with other issues - one of which is relative to racing and gambling. She reiterated that the Board of Supervisors as a whole has not given the lobbyists any authority to lobby for the removal of horsemen from the RACI board.

At this time, Chair Sealock called on John Hinshaw with the Horse and Dog Breeding Program in the Iowa Department of Agriculture and Land Stewardship to give the Commission an update on the

program. Mr. Hinshaw reported that since 1994 there has been an increase of 1,255 mares in the program which is directly related to the success at PM. The mares are in 80 different counties within Iowa. Breeders are moving into the state from other states and putting up facilities. Broodmares have been brought into the state from both coasts. The success has also carried over to the dog program. The number of dogs registered in a year has not fluctuated much in the past three years; however, the past year there was an increase of 32 litters. In addition, the quality of the animals has increased significantly; therefore, they are much more competitive at the track making them eligible to win larger sums of money. Mr. Hinshaw noted that the dog breeding industry considers Iowa's program to be the best in the country. He noted there were twostakes races in Dubuque and one in Council Bluffs which were strictly for Iowa greyhounds.

Mr. Ketterer stated that economic impact studies had been done on a national level by the horse industry regarding the direct and indirect benefits to a community. When an individual invests in a broodmare, they will not see a return on that investment for two or three years. He feels that the uncertainty surrounding PM would have an effect on whether or not those individuals would proceed in making that kind of an investment. Mr. Hinshaw noted that two or three stallions will have full books this year - a first in the state of Iowa.

Chair Sealock moved on to the distribution of the Horse Promotion Fund. Ms. Vanderloo noted that the Legislature had amended Iowa Code Section 99D.12 to read as follows: "Two percent shall be deposited by the commission into a special fund to be known as the horse racing promotion fund. The commission each year shall approve a nonprofit organization to use moneys in the fund for research, education, and marketing of horse racing in the state, including public relations, and other promotional techniques. The nonprofit organization shall not engage in political activity. It shall be a condition of the allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation." Last year, the Commission started providing public notice on meeting agendas as to the deadline for interested groups to apply for these monies. As one of the groups had submitted their request to Chair Sealock, Ms. Vanderloo noted that the requests were to be submitted to the Des Moines Commission office. PM generated funds of $5,059.46. The two groups requesting the funds are the Iowa Harness Association and the Iowa Thoroughbred Owners and Breeders Association (ITOBA). No request for accounting of the funds usage was received from the Iowa Quarter Horse Racing Association. ITOBA submitted their accounting of how the funds received last year were used with their request for funds this year. This is the first time that the Iowa Harness Association has received funds. Ms. Vanderloo recommended that the ITOBA receive what was generated by thoroughbred races, harness receive what was generated through harness races, and that funds generated by quarter horses races be equally divided between the two groups. She requested that the groups submit their expenditures of these funds to the Des Moines office by January 1, 1998.

Hearing no further comments, Chair Sealock requested a motion. Commissioner Allen moved to approve the distribution of the Horse Promotion Fund. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-42)

Chair Sealock moved to the Contract Approvals, and called on Mr. Wentworth of DGP&C who presented the following contracts to the Commission for approval:

- Aladdin Magiclean, Inc. - Linen Services
- Anchor Games - Commemorative Coins
- Henry Russell Bruce - Advertising Services
- Interstate Power Co. - Electric Service
- Myers-Cox - Food & Beverage Products
- O'Connor & Thomas, P.C. - Legal Services
- Sysco Food Service of Iowa - Food & Beverage Products
- International Union of Operating Engineers , Local 758 - Labor Agreement

Hearing no discussion regarding the contracts, Chair Sealock requested a motion. Commissioner Hansen moved to approve the contracts as submitted by DGP&C. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-43)

Chair Sealock moved on to the contracts submitted by PM. Mr. Farinella presented the following contracts for Commission approval:

- Anchor Coin, dba Anchor Games - "Clear Winner" Slot Machine, "Wheel of Gold" Slot Machines and "Totem Pole" machines
- American Specialty Underwriters - On Track Accident Insurance

As there were no questions regarding the contracts, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted by PM. Commissioner Whittenburg seconded the motion which carried unanimously. (See Order No. 97-44)

Chair Sealock called on Catfish Bend Casinos to present their contracts. Mr. Hoyer presented the following contracts for Commission approval:

- Color-Ad Signs, Inc - Signs for Barge
- FloorCrafters - Carpet & Tile for Boat and Barge
- Frank Millard and Company, Inc. - HVAC & Refrigeration for Boat & Barge
- Napier, Wright & Wolf - Office Building
- Norm's Koestner Electric, Inc. - Electrical Contractor for Boat & Barge
- Reinhart Food Service - Food Products

- Valley Poultry - Food Product

Mr. Hoyer advised the Commission that the Request for Contract Approval form on Napier, Wright & Wolf should indicate that George Wright and John Wright have signed the offer which has been submitted for approval. He also noted that all of the contracts were with Iowa-based vendors.

As there was no further discussion regarding the contracts, Chair Sealock called for a motion. Commissioner Whittenburg moved to approve the contracts as submitted by Catfish Bend. Commissioner Hansen seconded the motion which carried unanimously. (See Order No. 97-45)

Chair Sealock called on Lady Luck Bettendorf to present their contracts for approval. Mr. Ellis presented the following contracts:

- Artists International Management - Appearance Agreements for Various Entertainers
- The Bobby Roberts Co. - Appearance Agreements for Various Artists
- Buddy Lee Attractions - Contract Agreements for Various Entertainers
- Hoffman Talent Agency - Appearance Agreements for Various Artists
- Paradise Artists, Inc. - Appearance Agreement
- Ryan Companies - Interim Construction Agreement
- Regency Attractions - Appearance Agreements for Various Artists
- Samuel's Jewelers - Various Diamond Bracelets for Promotion
- Tim Tye Entertainment - Appearance Agreement
- WMS Gaming, Inc. - Platinum FX Slot Machines/Slant Top Video Slot Machines
- Bettendorf Riverfront Development Co./Lady Luck Quad Cities - Second Amendment to the Operating Agreement

As there were no questions regarding the above contracts, Chair Sealock called for a motion. Commissioner Allen moved to approve the contracts as submitted by Lady Luck Bettendorf. Commissioner Whittenburg seconded the motion which carried unanimously. (See Order No. 97-46)

Chair Sealock moved to the contracts submitted by the Belle of Sioux City. Mr. Malloy presented the following contracts for Commission approval:

- Argosy Gaming Company - Various Inter-Company Charges for December, 1996
- Argosy Gaming Company - Various Inter-Company Charges for January, 1997

Hearing no questions or discussion concerning the contracts, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted by Belle of Sioux City. Commissioner Whittenburg seconded the motion which carried unanimously. (See Order No. 97-47)

Chair Sealock called on Mr. Lohman who presented the following contracts for Commission approval on behalf of The President:

- Heritage Landscape Design - Landscaping & Irrigation Work
- Zimmerman, Laurent & Richardson, Inc. - Ad Agency Retainer

Hearing no discussion concerning the contracts, Chair Sealock called for a motion. Commissioner Whittenburg moved to approve the contracts as submitted by The President. Commissioner Hansen seconded the motion which carried unanimously. (See Order No. 97-48)

Chair Sealock moved to Administrative Business. She informed those in attendance at the Commission meeting that it was necessary to change the date of the April Commission meeting. Mr. Ketterer indicated that the April Commission meeting had been changed from Thursday, April 17, 1997 to Tuesday, April 8, 1997 at Harveys Convention Center in Council Bluffs. Chair Sealock indicated that an individual had asked if the April Commission meeting could be moved to Des Moines, but she reiterated that the meeting would be held in Council Bluffs on April 8th, and that Commission members would be meeting the evening before for dinner as usual.

As there were no other administrative business items, Chair Sealock moved on to Public Comment. Mr. Ketterer noted that two individuals had signed up to address the Commission. Chair Sealock advised that public comment regarding Argosy and Clarke County will be heard at the April meeting. She noted that Chuck DeVos had requested to address the Commission about changing the location of the April Commission meeting. Mr. DeVos had spoken directly with Chair Sealock and was advised that the location would not be changed. Mr. DeVos had already left the meeting. The second individual who had signed up was Mark Schroeder. Mr. Schroeder had also left the meeting.

At this time, the Commission heard Clarke County Development Corporation/Argosy of Iowa, Inc.'s presentation regarding their license application for an excursion gambling boat license in Osceola, Iowa. Jeff Roberts, a consultant to Argosy Gaming Co. (Argosy), advised the Commissioners that the following individuals would be addressing various aspects of the application: Steve Norton, President of Argosy, would present a background of the Osceola project, review Argosy's current status and accomplishments, and review the market studies performed regarding the Osceola market; Joe Uram, Chief Financial Officer for Argosy, would address their financial suitability of Argosy for a license and summarize the proposed Osceola project; Brent Bickett of Bear Stearns will address the financing for this project; Ken Baker, Clarke County Development Corporation, will address the Commission on behalf of the non-profit organization; Fred Wood, Osceola Water Board, on the environmental issues, and Mayor Fred Diehl will address public support for the project. Mr. Norton and Mr. Uram will conclude the presentation.

Mr. Norton started out the presentation by giving a brief history of the Osceola application: The County referendum was passed in February, 1995 with a 69% vote. An application was filed with the Commission in April, 1995 which was denied in July, 1995. As part of their due diligence to refile an application for a license in Osceola, it was required that Argosy re-evaluate the market to determine if the market was still adequate to produce results consistent with shareholder/bondholder expectations. They also evaluated whether or not this location would serve the intended market of all individuals north and south of I-35, as well as those individuals within an hour's drive of their facility. Argosy needed to design a project consistent with Iowa law, the needs of south Central Iowa, Osceola and Clarke County, demonstrate financial capability; operating expertise, and work closely with Clarke County Development Corporation and Osceola.

Mr. Norton stated that Argosy of Iowa is a wholly owned subsidiary of Argosy Gaming Co. which was the first licensee in Illinois, Louisiana and the Kansas City market. Argosy holds licenses in all five riverboat gaming jurisdictions which is an indication of their license suitability. Argosy is outperforming two major companies by approximately 50% despite a much smaller original investment. He noted that they have increased the fees and taxes received from the Sioux City riverboat by 800%.

Mr. Norton went on to note that their most recent project was the opening of their temporary facility in Lawrenceburg, Indiana. The permanent site is under construction and should be open in December, 1997. It is possible the permanent boat will be able to begin operation in July, 1997. The permanent boat will have over 83,000 square feet of usable interior space, and could possibly have over 3,000 gaming positions. Analysts project the facility could win between $225 - $300 million annually. Mr. Norton stated that even with the temporary boat, Argosy is generating 50% more monthly revenue than any of the Iowa riverboats. He noted that Argosy has been very successful at assessing the markets and investing the appropriate amount relative to the size of the market, but have expanded the project scope after opening by anywhere from two to six times the original investment.

Mr. Norton compared the gaming positions by location in the state: The eastern side has approximately 6,000 gaming positions or 3.8 positions per 1,000 of population; the western side has approximately 6,000 gaming positions or 4.74 positions per 1,000 of population; but the central portion has only 1,900 gaming positions or 1.8 positions per 1,000 of population.

Mr. Norton stated that Argosy's independent study by Arthur Andersen indicated that this market, including the Des Moines area, would most likely develop casino revenues in the $165 - $200 million range, but could easily reach $230 million for the casinos nearby. Arthur Andersen indicated that Argosy could possibly generate revenues of $60 -$65 million per year if they only attracted 35% of the market share.

At this time, Mr. Norton called on Mr. Uram who advised the Commission that he would cover Argosy's current financial situation, project funding for Osceola, and project scope and description. Argosy went public in 1993 with the most successful public offering ever in the gaming industry. The company made a profit every year through 1995 when they won the gaming license for suburban Cincinnati. Mr. Uram noted that in order for Argosy to win that project they had to deliver a massive casino project. In order to pay for that project, Argosy mortgaged their future by borrowing $235 million. In order to cover the interest payments on that debt, they anticipated opening a temporary riverboat casino almost immediately followed with the opening of the permanent riverboat in 12 months which could accomodate 4,000 gamblers. In 1996, Argosy experienced a delay in the permit from the Army Corps of Engineers which had a significant impact on Argosy. The delay meant that Argosy would not have any income to help offset the interest expense on the $235 million debt. Additionally, Argosy hired a number of senior people for the Lawrenceburg casino totaling in excess of $12 million of pre-opening and payroll expenses. Mr. Uram stated that the unfavorable operating results reported by Argosy in 1996 are behind them. The Lawrenceburg facility is open and generating revenue greater than any riverboat facility in Iowa despite some operating impediments.

Mr. Uram advised the Commission that Argosy is about to move from a company that reported unattractive operating results in 1996 to a company in 1998 that will be flush with cash. He noted that in 1997 their cash will about match the interest payments. He stated that Argosy is a strong company despite their financial problems of 1996. He stated that virtually every Wall Street analyst will concur that Argosy is fundamentally healthy.

Mr. Uram reviewed the Company's current status and where it is headed. Operating cash flow in 1996 was a negative $11 million and Argosy had a significant interest expense of $31 million which created a negative cash flow, after interest, of $25 million. In 1997, with their temporary facility operating, Wall Street analysts project the operating cash flow will approximate the interest expense. When the Lawrenceburg permanent facility opens in 1998, Wall Street analysts are projecting an operating cash flow of $107 million, more than twice their interest expense of $45 million.

Mr. Uram went on to state that, in 1996, most of the new jurisdictional gaming companys, including but not limited to Argosy, lost significant amounts of their market cap. When compared with other companies operating in Iowa, Argosy had the second highest book equity. When looking at market cap, the number of shares times the share price, Argosy is currently third despite their depressed share price.

Mr. Uram then addressed how Argosy would pay for this project. He stated that at the end of 1996, excluding in excess of $80 million cash which is segregated to pay for Lawrenceburg, Argosy had free cash of $35 million. They are expecting an income tax refund of $10 million. Based on the income projections for 1997, Argosy would have $30 million to invest in the Osceola project should

they desire to do so. The Osceola project, as filed, will cost $60 million, and Mr. Uram has included another $10 million as a cushion. He stated that virtually every riverboat project by a non-strip company in Nevada, funding is raised after licenses are granted. He went on to state that Argosy could obtain funding from private markets with the help of Bear Stears or private markets through Bank of America Securities or First Toronto Group from whom they have a commitment letter for $60 million. He stated that Argosy would determine what type of funding to seek if a license is granted, and after market conditions are reviewed by an outside investment banker.

Mr. Uram moved on to the project timeline. Assuming a license is granted in April, they would immediately proceed with final architecture drawings which should be completed by the fourth quarter. As the riverboat will be built on site, construction can not begin until the completion of the final drawings. If construction can begin in the fourth quarter of 1997, it should be completed by the fourth quarter of 1998. Should weather conditions prohibit construction during the winter season, construction would be delayed until the end of the first quarter in 1998.

Argosy would build a new road which will lead directly to an all-surface parking lot, terminal building and the riverboat. The facility will have marquee entertainment. The land based facilities will include a 40,000 square foot terminal building, 1,100 parking spaces, a 300 seat buffet and a 50 seat steakhouse. The project will include a facility which will be a showroom at night and a conference center by day which will seat 500 people.

Mr. Uram reiterated Mr. Norton's statement that Argosy has been very successful at right-sizing the amount of dollars based upon the projected level of win. Most prudent individuals in the gaming industry suggest investing approximately one dollar for every dollar of anticipated casino revenue. The Arthur Andersen market study confirms their projections and supports a $60 million investment.

Mr. Uram noted that the vessel would be built on site and comply with U.S. Coast Guard standards. It would have room for 800 slot machines and 40 table games. The depth of West Lake varies from 22 feet to 34 feet in the proposed cruise path while the draft on the vessel would be six to seven feet. Mr. Uram stated that lake cruising would be safer than river cruising as there is no current or barge traffic to contend with. These two issues are considered to be the highest risk factors to river cruising.

Mr. Uram noted that the Commission had promulgated rules identifying the considerations for lake cruising. He indicated that Argosy had addressed every consideration outlined by staff.

Brent Bickett, Associate Director of Bear Stearns, stated that Bear Stearns believes Argosy can successfully finance the Osceola project based on current market conditions. This belief is based on the strength of the central Iowa gaming market, the quality of the proposed project, and the fact

that Argosy has been able to raise over $600 million in U.S. capital markets, including the $235 million for the Lawrenceburg project on which Bear Stearns had worked.

Ken Baker, representing the Clarke County Development Corporation, stated that riverboat gambling has not lost any of its support or enthusiasm in south central Iowa. Clarke County passed the referendum by nearly 70%, and individuals are constantly contacting them with ideas and encouragement. They are confident of their ability to have a successful operation. Clarke County will have the opportunity to increase its gross revenues by approximately $2 million annually. Two million dollars annually represents about a 12% increase in revenues for the benefit of the general population.

Dr. Fred Wood, Director of the Osceola Water Board, stated that the Board of Water Works Trustees is charged by Iowa law to maintain the water quality for consumers. He indicated he would address the following four key issues identified by the Water Board, the Iowa Department of Natural Resources, and on-site consultant from HR Green & Company:

1) Catastraphic spill of diesel or sewage: Based on impact conducted by Mark Dubin in June, 1995, the DNR felt the up-to-date treatment facility and contigency plan to be implemented if a license is granted would be adquate to protect water consumers from any unsafe water threat. Dr. Wood stated that it would take less than 1% of the water in the lake to dilute either a catastraphic diesel spill or sewage spill, or both, and should any undiluted water reach the plant, it could easily be removed by the clarifier and granular activated carbon blanket and final filters.

2) Sewage and sewage handling: Under normal non-catastraphic handling of sewage from the boat, it will be discharged directly into Osceola's sanitary sewer system. If a situation occurred which would allow some sewage into the lake, the same dilution factors mentioned earlier would apply. A fail-safe connection will be made between the boat and the sanitary sewer system in which there is virtually no opportunity that an event would occur. All sewer from land based facilities will be discharged into the sanitary sewer.

3) Possible silt problems caused by the cruising vessel: The water is currently removed from the lake for treatment at either 12 or 18 feet below the level of the crest of the spillway. Water samples are collected and checked for durbidity daily. These levels are currently very low, and the DNR does not feel the vessel will create any more durbidity than a windy March day.

4) Historic threat of a toxic spill into the lake from I-35, US 34 or the Burlington Northern Railroad: The location of the Argosy complex will generate assistance from Argosy in building the retention basins needed.

Dr. Wood stated that the Argosy project does not present any risk to the drinking water quality, and diminishes the risk of future pollution by the construction of their facility and the basins.

Mayor Fred Diehl stated that Osceola and all of south central Iowa want riverboat gaming. He noted that Osceola and other local communities are very excited about the proposed vessel due to the number of jobs it would generate as well as other economic benefits. Mayor Diehl advised the Commission that Circus Circus had contacted Osceola about working with them in a partnership on a project; however, they elected to stay with Argosy. The needs of south central Iowa have not changed since the previous presentation, they still need the jobs and economic development. Mayor Diehl stated that Clarke County deserves the opportunity to participate in Iowa's tourism and entertainment industry just like eastern and western Iowa.

Mr. Norton and Mr. Uram concluded the presentation. Mr. Norton stated his belief that Argosy preserves the integrity of Iowa riverboat gaming. He reiterated that the benfits to the state and local community increased 800% after they assumed operation of the vessel, and brought in a larger vessel. Mr. Norton stated that Argosy has a track record of being a diligent and responsible licensee.

Mr. Uram stated that this application does protect the best interest of Iowa as it will generate incremental tax revenue of $11.4 million to the state as there are no taxable table games in central Iowa; Clarke County would receive $300,000; and Clarke County Deveopment would receive approximately $600,000; and the City of Osceola would receive nearly $800,000. Market studies indicate that this project will help maintain the financial integrity of Prairie Meadows.

Mr. Norton stated that Argosy's application complied with all of the requirements of Iowa's statutes and regulations. He noted that the project would be built in strict compliance with DNR rules and regulations. He reiterated that they have received a $60 million financing commitment should they go that route.

Mr. Uram pointed out that the various market studies indicate Des Moines, central Iowa and southern Iowa are underserved. He also noted that the history in Council Bluffs suggests that there can be an expansion of gambling that can rasonably be supported in central Iowa.

Mr. Norton advised that this project assures the safety of Iowa citizens as it avoids strong river currents and barges; that the Water Board has confirmed there will be no detrimental environmental effects, and that the integrity of the water purity and safety is assured.

Mr. Uram stated that one of the components of the Iowa statute is to promote economic development and tourism. This application indicates that 700 jobs will be generated with an annual payroll of $14 million and annual taxes and development fees of $13 million.

Mr. Norton stated that Argosy feels it has met the criteria for a riverboat gaming license, including the new IRGC regulations covering riverboats on lakes as originally contemplated in the initial gaming statute. He reiterated that West Lake is adequate in size and depth for a cruising riverboat. The vessel and propulsions will meet all agency requirements; and there are no environmental issues that can not be appropriately addressed - the construction of the facility will reduce the risk of a toxic spill from nearby highways and railroads. The project will comply with DNR regulations in terms of wake and speed of the vessel, as well as Oceola Water Board requirements. Mr. Norton concluded by asking the Commission to vote favorably on the application.

Chair Sealock reiterated her earlier statement that the Commission would allow time at the April Commission meeting for public comment concerning this application. She felt that a lot of the Commissioner's questions would be addressed at the same time after having an opportunity to hear both sides. Chair Sealock complimented Argosy on the fact that the application addressed many of the concerns expressed during the initial application.

Commissioner Peyton indicated that he had compared the five year projections from the original application to determine where differences occurred. In the 1995 application, Argosy projected casino revenues of $31 million in the first year up to $32 million in the fifth year. He noted that he supported the original application because the Christiansen/Cummings study, as well as Argosy's, showed that the market was almost double that. Commissioner Peyton stated that he did not understand how the current application could indicate the casino revenues would be in the $60 million range - double the original projections. He asked them to explain.

Mr. Uram stated that when the initial projections were filed with the prior application, the amounts stated and approved by the CFO, namely himself, reflected conservatism on his part. Argosy now has the benefit of 20/20 hindsight in the central Iowa market. It is apparent to everyone that PM has outperformed their original projections by a significant amount. In looking at the history in Council Bluffs, that market has turned out to be much deeper than originally thought. The current projections reflect numbers that are almost identical to Arthur Andersen's study. Mr. Uram stated that he felt Argosy was to conservative in their projections with the initial application.

Commissioner Peyton stated that was the answer he had anticipated; however, he is concerned about the type of financing and projected balance sheet/statement of income due to the leverage and debt service. He noted that they showed an interest expense of $7.8 million for the five year period, but typically that would decline as the debt is reduced. Commissioner Peyton hoped that was not indicative that Argosy did not intend to make any principle payments. Mr. Uram indicated that there are two different primary methods of financing within the casino business; one being high yield bonds that do not require principle repayment. He stated that it is the objective, at the parent and subsidiary levels, to pay down debt aggressively. Argosy had the most conservative capital structure of any jurisdictional gaming company until they received the Lawrenceburg license.

Commissioner Peyton indicated that he had recalculated the cash flow as he feels that is a very good indicator of financial viability for a project. He included approximately $10 million for fixtures, equipment, financing, and $38 million of longer term debt. Based on the repayment period stated in the application, he calculated they would need about $5.8 million in principle reduction each year in order to stay on schedule with the projections. If that figure is added back into the cash flow calculations, it would amount to about $1.5 million the first year and escalates $2.7 million in the fifth year. Commissioner Peyton expressed his concern over the fact that capital improvements were not shown anywhere. Mr. Uram stated that Argosy does continue to invest in their projects once they are completed. Commissioner Peyton noted that Argosy does not show enough cash flow to invest in the Osceola project. Any significant capital expenditures would take the project into a negative standing. Mr. Norton indicated that was true only of the Osceola project, but pointed out that Argosy has consistently spent more on project expansion than what they got from cash flow. He went on to note that over the past three years, the major gaming companies have spent three times as much money as their cash flow which means they have had to seek additional funding or partners. Mr. Norton stated there are a number of ways to expand projects without using the company's own cash flow; but noted that he felt Mr. Uram has been very conservative. Mr. Uram advised Commissioner Peyton that the cash flow in 1998 would not allow, but mandate, that Argosy continue to invest in the Osceola project. Commissioner Peyton stated that he was not as concerned about additional development as preventing the physical facility from deteriorating.

Commissioner Peyton also stated that the interest rate troubled him. He calculated the interest rate and came up with 16.25% which is considered to be junk bond status. The leverage for the project is much different than it was two years ago and leaves very little room for error. In calculating the cash flow coverage of the interest rate along, Argosy goes from 1.2 to 1.3 times their interest coverage with no principle. Mr. Uram pointed out that First Toronto Group's financing commitment is one of several options that will be considered. Argosy is still working with Bear Stearns. The most appropriate financing would be evaluated after a license is granted. There may be cheaper ways to obtain financing for the project - one of those being for Argosy to increase its equity investment or have a partner provide capital. Commissioner Peyton stated that in his analysis of the project, he would feel a little more comfortable if he saw more equity in the project due to the high level of interest expense.

Commissioner Peyton went on to state that it was his understanding that Moody's analyzes companies in Argosy's niche of the gaming market and has determined that the average for the industry in their size company for EBITDA margin is 18.9%. When he analyzed Argosy's, it is more in the 26% range starting out, and should Argosy reach the industry average, that would take $4 million out of their projections, and he questioned whether there was room for that to occur. Mr. Norton replied that when the whole industry was reviewed, that encompassed several states where too much expansion has occurred. Several gaming companies are experiencing bankruptcies in those states, whereas Iowa has been more cautious about putting in more projects than the market could

support. Mr. Norton stated that was reasonable considering the tax rates, Iowa's effective tax rate is about 25% but that has not prohibited companies operating in strong markets from generating EBITDA of 25-40%. Commissioner Peyton indicated there are reasonable guesses as to the market, and feels an EBITDA of 26% is not out of line as long as there is no significant competition. Mr. Norton noted that the Osceola project would not be open much of 1997, if at all, and in 1998, Argosy's Lawrenceburg operation will be generating substantial cash flow to help keep other projects open. He noted that even though Sioux City is experiencing limited earnings, they have kept the facility open, and do not intend to close any of their facilities unless there is a substantial loss of cash flow. He noted that none of their projects are in a negative cash flow status.

Commissioner Peyton asked Mr. Norton how long Lawrenceburg would remain a virtual monopoly for Argosy. Mr. Norton stated that Indiana limits operators to one riverboat per county. He noted that there is a riverboat, which opened prior to them, operating in a county south and west of Lawrenceburg. He noted that company will open its permanent facility this summer, but Argosy still expects to do very well with their temporary facility. Mr. Norton stated the only long term risk to them would come from Ohio or Kentucky deciding to offer casino gaming which he does not feel will occur for several years. Mr. Uram noted there was a referendum in Ohio this past year which failed on a 60%-40% vote against gambling. This referendum was sponsored by three large gaming companies who spent over $8 million dollars.

Commissioner Allen asked them to clarify a statement in the Moody report which referred to the influx of casinos in the Kansas City (KC) area and stated that Argosy's position could improve somewhat if one of the following three criteria were met: a competitor closed, Missouri changed their $500 ceiling, or Argosy added a second facility.

Mr. Uram started his response by stating there are two debt rating companies, Moody's and Standards and Poor which operate out of New York. He noted that Moody's downgraded Argosy because of the Lawrenceburg delay, Standards & Poor did not. The two companies have a wide difference of opinion. Mr. Uram noted that an additional reason for the downgrade was the KC market. There was a 50% increase in market capacity due to the opening of the Stations Casino. The opening has had no impact on Argosy after 45 days of operation. He stated that Argosy has the highest revenue per dollar investment in the KC market.

Mr. Norton stated that Argosy feels they have a much better location in the KC market as they are located right next to the Kansas market place which contains approximately half of the population for the general region. The other gaming facilities are located on the Missouri side of the market and are in direct competition with each other. Mr. Norton stated that Stations Casino has $300 million invested in the project, and will be lucky to generate $180 million in revenue this year. He noted their EBITDA did decrease in the KC market due to some expansion, and that both Boyd and Hilton are operating with negative EBITDA and negative earnings.

Mr. Uram stated one segment of the Moody report was on target on the issue that Argosy's cash flow earnings could improve if there was a change in the competitive landscape. There are two operators with two boats in KC - Harrah's and Station Casino. Under Missouri statute, individuals can only enter those facilities at specified times; however, individuals can enter Argosy's facility at every even hour. Mr. Uram noted that Argosy could decide to move the temporary landing barge of approximately 30,000 square feet in Lawrenceburg to KC or Alton with very little capital expenditure on their part. Mr. Norton stated that it is very unlikely that Missouri will pass a law eliminating the $500 loss limit, but there is proposed legislation to do away with the simulated cruising which would allow gaming patrons to enter and leave the boat at will. Illinois is also considering similar legislation.

Commissioner Allen noted there have been reports that PM could be a partner with Argosy, and wondered what the chances were that would occur. Mr. Norton indicated they would look at it, but was not sure that it would occur due to the problems that RACI and Polk County are experiencing at this time. He stated that the two would do better if they were operated together rather than separately. Commissioner Allen stated that she had seen a report which indicated that PM would not contest the current application.

Commissioner Hansen asked if the Osceola project was going to be totally leveraged versus entering into the project with 20% equity. Mr. Uram stated that the financier would determine the amount of equity required from a financial market standpoint. He noted that Argosy is prepared to put in 20% equity if the Commission required them to do so.

Commissioner Hansen asked if the Osceola project could support itself beyond the initial financing without an additional company infusion. Mr. Uram stated they feel it can, that their projections are a little conservative; however, Argosy as the parent company, is prepared to put into that subsidiary as they feel it is appropriate and prudent.

Commissioner Hansen noted that the Lawrenceburg project appears to be a heavy burden at this time, and wondered how much the Osceola project was going to be dependent on the overall success of Lawrenceburg. Mr. Norton stated that Argosy views Lawrenceburg as an opportunity rather than a problem. He noted that Argosy has land available to them at the Osceola site which is not true of their other locations. There is a tremendous amount of developmental land surrounding West Lake, and he can visualize golf courses, various parks, hotel development, or possibly a shopping venture. Mr. Norton stated that a lot of the possibilities for the land would not necessarily require that Argosy fund those projects.

Mr. Uram compared the Lawrenceburg vessel which could have up to 3,550 gaming positions to the Elgin, Illinois vessel which has approximately 1,350 gaming positions. He stated that Elgin does

$100 million of cash flow with less population demographics per gaming position within 100 miles than is available in Lawrenceburg.

Commissioner Hansen noted that the financials paint a rather bleak picture of Argosy at this time. Commissioner Hansen asked if Argosy was being pushed by any of their lenders for shorter loan terms or accelerated payments. Mr. Uram stated that was not occuring. Commissioner Hansen asked if the financial analysts were aware of that particular statement. Mr. Uram indicated that he personally speaks with representatives from Moody's and Standards & Poors on a regular basis. He attributed the differences in the reports to professional differences about various gaming markets.

Commissioner Allen asked about the entryway into the project and the potential congestion on Highway 34 and the Burlington Northern Railway, and possibilities of working with the DOT to establish another entrance, possibly one mile north on I-35. Mr. Norton asked that Paul Keller, Director of Development for Argosy, respond to that question. Mr. Keller stated that the situation has been reviewed with a traffic engineer out of Des Moines, as well as a road engineer located in Osceola. There is an existing at-grade crossing at that location. The engineers feel the existing interchange can be used by signalizing it, widening it, and providing additional stacking room on Highway 34 in order to allow the trains to pass. There is already good sight visibility on both sides of the track. The Burlington Northern is in the process of upgrading their signalization along the tracks so that the advanced warning system can be added. Mr. Keller stated that Argosy is comfortable with upgrading the existing entrance. Mr. Norton stated that Iowa riverboats do not experience the same amount of traffic stacking as those in other gaming jurisdictions.

Chair Sealock stated that the questions from Commissioners Peyton and Hansen had addressed a majority of the Commission's concerns regarding the financial aspects of the project. She referred to Mr. Uram's statement which indicated that funding for the project would not be solicited unless a license was granted. Chair Sealock stated that Iowa has been consistent in requiring a firm financing plan to be in place prior to the license being issued. She indicated that she would look into the situation with Harveys. Chair Sealock noted that several gaming projects were put on hold until such time as the Commission was provided with a Letter of Credit dated the day the license was issued.

Chair Sealock referred to numerous management changes that have taken place at Argosy, and wondered if some of the staff the Commission has worked closely with would still be involved with the company at the completion of the project. She brought up the fact that Mr. Norton had recently sold some of his stock in Argosy.

Mr. Norton confirmed that he had sold some of his stock in December to alleviate a large gain on some other stocks for tax purposes. Since then, he is purchasing convertible debentures which he feels is a good indication that he feels Argosy will make it.

Chair Sealock asked Mr. Norton if he could assure the Commission that some of the individuals the Commission has worked with and know will be around to see the project to fruition. Mr. Norton stated that he was not sure if any one could do that, but he is planning to be around for the conclusion of the project.

Chair Sealock also brought up the labor shortage in Osceola which did not exist at the time of the original application. Mr. Norton stated that it was his understanding that the area still had the highest unemployment rate in the state according to Mayor Diehl. He feels there is sufficient personnel in all of south central Iowa, and does not feel that will create any problems for them. He noted that they are experiencing a labor shortage in the Sioux City area. Commissioner Peyton noted there had been some reports earlier that some of the major employers in the area were concerned as to whether or not there would be a sufficient labor supply to go around. Mayor Diehl noted that issue had been dealt with. Mr. Norton stated that gaming industries, resorts, hotels, and restaurants are able to use much higher percentage of entry level people where other businesses may require high school or college degrees, engineering degrees, etc. Mayor Diehl stated that out of 1,400 applicants for positions at the Hormel plant, they hired 11%.

Chair Sealock noted that Argosy expected 50% of their market to come from Polk County, and another 13% coming from counties near Polk County. She wondered if the defeat of the referendums in Polk and Dallas Counties caused them any concern that the public was becoming anti-gaming or that those individuals did not want it in their county. Mr. Norton stated that he felt it was for the latter reason. People enjoy gambling as a form of entertainment as proven by PM success. He went on to state that this market, with no other full scale casino nearby, will be able to do a good bus tour business.

Mr. Ketterer stated that the Commissioners had covered most of the topics he was thinking about. He reiterated that several of the same analysts Argosy referred to are indicating that Argosy needs new management, and operations are declining in several jurisdictions. Mr. Ketterer noted that the continuity of personnel was one of the attractions of working with Argosy mentioned by Mayor Diehl, but also noted that some of the people the Commission has worked with for the past couple of years are no longer with the Company, and the Commission is concerned about the longevity of some of the other individuals they have dealt with.

Mr. Ketterer noted that the Commission has heard that the project will not proceed without an equity infusion or some type of partner. Should a license be granted, is the Commission going to be faced with a partner entering into the project several months into the project. Mr. Norton noted that those issues could not occur without the Commission's approval. He went on to state that there have been other individuals interested in investing in the project; however, at the present time it is their intention to keep the project 100% Argosy. If, in the final analysis, it is determined that it would be

better to include a partner, it is possible they would be back before the Commission with that proposal.

Mr. Ketterer again asked about the long term future of the top officers of the company. Mr. Norton noted Argosy is looking for a Chief Executive, and is hopeful that individual will agree to keep some of the current executives.

Chair Sealock advised Argosy that they would appear earlier on the agenda in April, and would be the central point of the agenda. Chair Sealock called for a motion to adjourn. Commissioner Hansen moved to adjourn the meeting. Commissioner Peyton seconded the motion. The meeting adjourned at 5:00 PM.

MINUTES TAKEN BY

Julie D. Herrick CPS

JULIE D. HERRICK CPS
SECRETARY

IOWA RACING AND GAMING COMMISSION
MINUTES
APRIL 8, 1997

The Iowa Racing and Gaming Commission (IRGC) met on April 7, 1997 in Ballroom II of the Harveys Hotel located at 1 Harveys Boulevard, Council Bluffs, Iowa. Commission members present were: Rita Sealock, Chair; Nancy L. Whittenburg, Vice Chair; and members Brad Peyton, Bill Hansen and Jackie Allen.

Chair Sealock called the meeting to order at 8:00 AM, and requested a motion to approve the agenda. Commissioner Hansen so moved, and Commissioner Allen seconded the motion. The motion carried unanimously.

Chair Sealock then requested a motion to go into Executive Session for the purpose of receiving advice from legal counsel and DCI background investigations pursuant to Iowa Code Section 21.5(c) and (g). Commissioner Whittenburg so moved, and Commissioner Hansen seconded the motion. The motion carried unanimously. (See Order No. 97-49)

Following Executive Session, Chair Sealock called on Tony Payne, Executive Director of Iowa West Racing Association, who welcomed the Commission to Council Bluffs.

Chair Sealock called for a motion to approve the minutes from the March 6, 1997 Commission meeting. Commissioner Whittenburg moved to approve the minutes as submitted. Commissioner Allen seconded the motion which carried unanimously. (See Order No. 97-50)

Chair Sealock then called on Jack Ketterer, Administrator of IRGC, to discuss the following rules which are up for final adoption: Amend the Racing and Gaming Rules to reflect the change in office address, 491-4.1 - Definitions; 491-6.3 - Changing the renewal of license and granting of race dates to September; 491-7.8(14) - Duties of brakeman; and 491-10.5(15) Equine Anemia (EIA) Test. These rules were previously approved under Notice of Intended Action at the January Commission meeting. Chair Sealock called for a motion to approve the above rules. Commissioner Peyton moved to final adopt the rules as submitted. Commissioner Hansen seconded the motion which carried unanimously. (See Order No. 97-51)

At this time, Chair Sealock moved to Clarke County Development Corporation/Argosy of Iowa's application for an excursion boat gambling license in Osceola, Iowa. She advised those in attendance that individuals wishing to address the Commission on their own behalf would be allowed three minutes, and individuals speaking on behalf of a group would be given five minutes. Chair Sealock went on to note that this is the first time the Commission has had a company reapply for a license, and following the denial of the first application a year ago, there were several misconceptions surrounding the decision and actions of Commission members prior to the meeting. She stated that the entire process is always open and above board, that everyone would be able to speak their mind and feel that they had been heard. The Commission views this decision as extremely important.

Chair Sealock noted that there had been allegations that the Commission was overstepping its boundaries as they did not have the authority to deny a license. She advised that the Commission is given that authority in Iowa Code Section 99F.7 which states in part: "... The commission shall decide the number, location, and type of excursion gambling boats licensed under this chapter for operation on the rivers, lakes, and reservoirs of this state. ..."

At this time, Chair Sealock opened the floor for public comment to those individuals who had signed up to address the Commission. The following individuals requested that the Commission approve Argosy's application: Cheryl Arnold on behalf of Representative Richard Arnold; Susan Stearns; Jerry Smith, Area Director for Job Training Programs in Area 14; Senator Patty Judge; Mayor Fred Diehl; Terry Robins, Clarke County Board of Supervisor; Noel E. Friday; and Mary Ellen Kimball. The following individuals spoke against Argosy's application: Ted Welch, Pastor at Calgary Baptist Church; Adrian Fuller, Soil & Water Commissioner for Clarke County; Mary Klein, Board Member of Clarke County Resource Conservation & Development, and Assistant Commissioner for Clarke County Soil & Water Conservation District; Helen DeVos; Chuck DeVos, Concerned Citizens Against Gambling of Osceola; Carolyn Derrick; Dorsey Derrick, a teacher and Pastor of First Baptist Church; James Baughman, Pastor of Murray Baptist Church; and Otto Steele, Iowa Citizens for Gambling Free Government. Those who spoke in favor of the license expressed the need for additional jobs and economic growth in the region. Those who spoke against the license cited the increased industry in the area, concern for the drinking water source, the demise of family morals and the devastation caused by gambling. Art Hill, Comptroller for Harveys Kanesville Queen, read a letter from Ronald D. Alling, legal counsel for Harveys, to the Commission regarding their financing commitments as represented to the Commission during their license application.

Jeff Roberts, consultant for Argosy Gaming (Argosy), advised the Commission there were three points that Argosy would like to address relating to the public comments. The first area was the job market which exists in south central Iowa. He indicated that when Osceola Foods opened recently, there were 1400 applications, and only 11% were hired which indicates a strong demand for good jobs and they are not concerned about their ability to be able to hire sufficient staff. The second area of concern he addressed was the water quality at West Lake. Mr. Roberts indicated that Argosy is very cognizant of the fact that West Lake is a reservoir and is the sole source of drinking water for the Osceola community. He noted that Argosy had engaged HR Green to study the environmental impact on West Lake, as well as the impact on the quality and quantity of the water. Mr. Roberts stated that under Iowa law, the Osceola Water Works Board is charged with the primary responsibility of protecting the water quality that is provided to the citizens of Osceola. The Department of Natural Resources (DNR), under Iowa law, has an advisory role and a supervisory role. They have the authority to check and make sure that the water meets state specifications. The third area Mr. Roberts wished to address was the financial condition of Argosy. He noted this was an area of great concern to the Commission during their license presentation, and expected it to continue to be a significant concern of the Commission. He noted that Joe Uram, Chief Financial

Officer of Argosy Gaming, had prepared some slides which should help alleviate some of the concerns.

At this time, Mr. Roberts requested that Dr. Fred Woods from the Osceola Water Works Board, and Paul Keller, Project Manager for Argosy, address the Commission concerning the steps and tests that Argosy has taken, and various studies undertaken to address the possibility of a catastrophe happening, and the effects on West Lake. Dr. Woods stated that Osceola's quest for alternate sources of water are not related to the riverboat. Regarding contamination of the lake, he noted the HR Green report clearly sets forth what would occur should a spill happen. Meetings have been held with individuals in DNR and they have indicated there is no problem with water quality.

Chair Sealock indicated that she would like to hear from the DNR representative. Larry Wilson, Director of DNR, stated that his department is responsible for statutory oversight of this particular vessel in two areas: environmental capacity of the vessel (procedures in place for proper waste management, prevention of loss of oil and other petroleum products, and environmental safety features will have to be certified by the department) and boat safety. Agents from DNR will inspect the vessel at least once a year, more often if there are problems. Mr. Wilson indicated that Tom Paris, Administrator of the Fish and Wildlife Division, and Darrel McAllister, Bureau Chief for Water Quality in the Environmental Division, were also in attendance to answer questions.

Commissioner Allen noted that Dr. Woods, at last month's Commission meeting, had stated that even considering the magnitude of a catastrophic spill, which would include the entire diesel and sewage capacity of the vessel, there would be virtually no effect on the pollution of the lake. As she had some concerns regarding that comment, she learned that there are 300 acres in the lake at an average depth of 20 feet which equals 6,000 acre feet. There are 325,828 gallons per feet times the 6,000 acre feet which equals 1.9 billion gallons of water in West Lake. Mr. Wilson noted that the size of the vessel and its diesel capacity would also play an important part in determining any kind of impact, if any.

Mr. Keller informed the Commission that one of his first meetings with individuals in Osceola regarding the proposed vessel was with the Water Board. Argosy has consistently sought verification that the improvements they would make around the lake would provide a benefit to the area before they would consider placing a vessel on the lake.

Mr. Uram indicated that he has read several newspaper articles which have challenged the financial viability of the Osceola project. He proceeded with his slide presentation. In his position as CFO for Argosy, when he determines whether or not Argosy should enter a particular market, he also determines whether or not their entry into that market is financible and if the project is viable. Argosy engaged Arthur Anderson to perform a market study for Osceola. That study mirrored Argosy's own market study that the market will support a casino. The second question he asks

himself is whether the scope of the facility is proper for the market. Argosy has used their best estimate to determine the capital structure and size for the project. The industry standard proposes that if a casino can generate about $1 of revenue for $1 of capital investment, the project will be successful. Mr. Uram noted that all of Argosy's project, except for Sioux City, are making money. He proceeded to note that Sioux City is not making a profit as they have the second highest tax rate in the state, and are located in the smallest market. The third question he answers relates to the level of capitalization of the project. He noted that many casino projects are traditionally capitalized with 20% equity. Mr. Uram stated that Argosy is prepared to commit $12 million of equity toward the Osceola project. In order to get debt financing, a casino needs to have interest coverage of approximately 1.5%. Even with a very high interest rate, their projections show an interest coverage that is two times greater which Argosy feels provides overpowering evidence of the financibility of the project. In conclusion, if the answers to the above three questions is yes, then the project is financible.

At this time, Mr. Uram introduced John Waldron, Vice President of Bear Stearns & Company in New York, and one of the leading financiers in the casino industry. Mr. Waldron stated that the majority of casino projects are being financed on a project basis as is being proposed for Osceola versus corporate financing. The difference between project financing and corporate financing is that project financing will have a higher interest rate, will require more collateral and financial competence, and will be more challenging in terms of executing the financing. In his opinion, based on his six years of experience in the industry, the Osceola project, based on its market size, the success of Prairie Meadows, and the 20% equity capital commitment, is very financible. He believes Argosy can finance the project either on its own or with a partner, and that several options are available to them.

Chair Sealock noted that the Commission had been advised at the March meeting that the Indiana project was completely paid for. Mr. Uram replied Argosy has all of its debt at the parent company level to finance all of its existing subsidiaries. When they funded the Indiana project, they borrowed $235 million which was placed in an escrow account which they can not touch. In addition to the escrow funds, Argosy has $38 million in cash which is unrestricted and is not allocated toward any projects. Based on those figures, Mr. Uram indicated that he feels Argosy has sufficient equity to make a traditional equity contribution to the Osceola project.

Mr. Waldron advised the Commission that Bear Stearns put together the financing for Lawenceburg, and further noted that financing can not be completed unless the market believes the project is fully paid for with contingency plans. Any estimation of construction costs which Bear Stearns looks at provide for higher costs than estimated - they are looking at $70 million for Osceola. Mr. Waldron clarified that the Lawenceburg project is completely paid for by funds in escrow accounts, plus contingency funds which are also in an escrow account.

Mr. Uram indicated that he felt a discussion was warranted regarding the differences between corporate-level financing and project-level financing. Mr. Uram noted that in the past, all of Argosy's debt has been at the parent company level which provided him with the ability to transfer funds between operations which is allowable with corporate credit. Under project credit, the funds are segregated in advance for that project, and the borrower of the funds is the subsidiary, and Argosy will infuse cash into the subsidiary which is the reason that Argosy's financial condition is a non-issue. He feels Argosy has sufficient equity to finance the project, as well as an appropriate debt to equity ratio. Mr. Waldron also indicated that financing for Osceola would be slightly higher as they would not have the ability to look at corporate financing.

Commissioner Peyton asked Mr. Waldron if he was stating that Argosy's financial situation would have no impact on their ability to raise cash. Mr. Waldron stated that the impact would be in the amount of equity which Argosy would be able to inject into the project. Commissioner Peyton asked Mr. Waldron if he anticipated having a separate equity offering. Mr. Waldron stated he did not. There was a lengthy discussion as to whether or not Argosy's financial situation at the corporate level would have any impact on the ability to obtain financing for the Osceola project, the kind of financing, and where the financing would come from - the capital market or private debt side.

Commissioner Peyton asked when Argosy's need for flexibility in seeking financing would end. Steve Norton, President of Argosy, indicated the need for flexibility would end with the granting of the license as they can not seek financing prior to being granted a license. Mr. Uram stated that Argosy would obtain financing as follows: firm drawings, receive bids, execute contracts on the selected bid, go to Wall Street to raise the money, and open tomorrow as a casino.

Mr. Ketterer explained, for the benefit of those who are not aware of the Commission's obligations in deciding whether or not to issue a license, that the statute requires that a license shall not be granted if there is substantial evidence that any of the following apply, and one of the subsections is that the applicant has not demonstrated financial responsibility sufficient to meet adequately the enterprise proposed. One section of the application requires the applicant to state the source or sources of funds for the construction of the proposed facility as set forth in the application, identify and document each source and type of equity contribution and the amount of such contribution and the commitment, if any, received for each funding contribution; each source of debt contribution and the amount of such contribution and present commitment, if any, received for such items. It is then up to each Commissioner to determine whether or not the information received is sufficient to satisfy the above stated requirements.

Mr. Ketterer asked Mr. Waldron if he knew of Jason Ader with Bear Stearns. Mr. Waldron stated that Mr. Ader is a research analyst for the gaming and lodging industry, and has an independent voice. Mr. Ketterer noted that he is recognized, along with two other analysts, as the voice of the industry. He went on to state that he had spoken with all three of the analysts, and his notes from

his conversation with Mr. Ader on March 3rd regarding Argosy showed that Argosy is negatively perceived on Wall Street, if they are able to obtain capital it would be at 15% or higher, and they would probably need to bring in a partner to have some type of equity infusion. He asked Mr. Waldron to tell him what had changed since that time. Mr. Waldron indicated that nothing had changed, and clarified that Mr. Ader reviews the equity markets of gaming companies. Mr. Ader's comments are addressing the equity market's perception of Argosy as a publicly traded company. Mr. Waldron stated that Argosy is one of 15 or 20 small publicly traded companies in which their equity has performed very poorly for various reasons. Mr. Ader does not address Argosy's ability, or several of its peers, to go into the high yield market place to raise capital. Mr. Waldron stated that he did not necessarily agree with Mr. Ader's statements regarding Argosy.

Mr. Uram added that the equity market has little validity or relevance to a company's ability to borrow money; that a better barometer would be a bond market's view. He went to note that there are several companies currently operating within the state that have access to the high yield or junk bond market. He showed a slide of the three companies with a first mortgage debt - Argosy, The President and Lady Luck with their current Standard & Poor (S&P) and Moody's rating. The slide showed that Argosy has the same rating from Moodys as two of the licensees in the state and better than two of the other licensees from S&P. Mr. Uram presented another slide which indicated that at the time the license was granted for Lady Luck, they had a S&P rating which was two levels below Argosy's rating, and their Moodys' rating was one level below Argosy. He presented a third slide which showed the level of equity of existing publicly traded companies in Iowa, and stated that he felt Argosy compared very favorably. He reiterated his opinion that he does not feel that this is a germane issue to their ability to obtain financing. The fourth slide he showed gave the market cap, the number of shares times the current share price, which again showed Argosy comparing favorably with the other licensees in the state in his opinion.

Commissioner Hansen asked Mr. Ketterer if he felt the information provided was responsive to Iowa Code Section 99F.7(b) which states that a license shall not be granted if there is substantial evidence that the applicant has not demonstrated financial responsibility sufficient to meet adequately the requirements of the enterprise proposed. He stated that he felt the information provided demonstrated that Argosy had sufficient financial responsibility to meet the requirements of the proposed enterprise. Mr. Ketterer indicated that he did not want to offer an opinion.

Mr. Ketterer asked what would happen if Argosy obtained the necessary financing for Osceola, and the permanent boat opened in Lawrenceburg but revenues did not meet Argosy's expectations. Mr. Uram indicated there would be no impact on the Osceola project; the only use of cash from Argosy, the parent company, is to seed the project. Mr. Ketterer asked what would happen to the parent company if Lawrenceburg did not produce the projected revenues. Mr. Uram indicated that there would be no impact because Argosy is able to service the debt at the current levels of revenue from the temporary casino. He indicated that during the month of January, Lawrenceburg had revenues

of $7.1 million, February revenues were $9.1 million, and March revenues were $10.3 or $10.4 million. Mr. Uram pointed out that the temporary facility offers no on-site parking, no dining facilities, and the boat is one-third the size of the permanent vessel; therefore, they are very confident about the market for the Lawrenceburg project.

Mr. Ketterer reiterated his question on what would happen to Argosy if Lawrenceburg did not succeed, and what impact would that have on the Osceola project. Mr. Norton stated that Argosy would not be able to withdraw any funds from the Osceola project to cover any debt of the parent company. The casinos would stay open, the project would continue, the job would be there; the possibility would exist for a change in management or ownership of stock, with Commission approval. Mr. Norton stated that Osceola will stand on its own, Lawrenceburg would stand on its own, and Argosy would survive.

Mr. Waldron explained that the bonds issued for the Lawrenceburg facility have an eight-year maturity date. No amortization payments are required, Argosy is only required to pay the interest for the next seven years. Should Lawrenceburg not generate sufficient cash revenues, Argosy would either reduce expenses or restructure the bonds. No principle payments are due on the existing bonds until 2003. The high yield market allows companies to obtain financing 8-10 years out with no principle payments.

Mr. Ketterer indicated that he feels there is room for another casino in central Iowa; but wonders what happens if Lawrenceburg doesn't achieve the results needed to retire the interest on the $235 million debt; what is Argosy's current cash flow; what if Argosy goes into Chapter 11 Bankruptcy; what happens to the management support for the Osceola project. He feels that the current management support is one of the major factors in the project. Mr. Norton stated that the $10 million in revenues is sufficient to cover the interest costs of their portion of the debt related to Lawrenceburg. At the time Argosy went public with the $235 million debt, they paid off a $100 million line of credit with Bank of America. Argosy only owns 57.5% of Lawrenceburg. Current revenue levels are sufficient to secure their portion of the debt. They anticipate revenues increasing significantly when the permanent vessel opens, possibly in August, and the permanent facilities in December.

Mr. Roberts stated that what he felt Mr. Ketterer was asking is what happens to the Osceola project if Argosy, the parent company, goes under. He stated that Argosy would hire a general manager to run the facility. Should Argosy enter Chapter 11 Bankruptcy proceedings, the general manager would probably stay in place, depending upon the trustees; however, nothing would happen to the Osceola facility as it is a separate corporation with separate debtors.

Commissioner Allen commented on the level of revenues generated at the Lawrenceburg facility without restaurants and on-site parking, as well as the fact that Argosy charges an admission fee to get on to the boat.

Commissioner Peyton stated that the point he wanted to make about the financing was that he was surprised that they did not have some type of tangible plan; but did not mean to imply that the project hinged on Argosy's finances. He stated that Argosy is in a comeback position, but doesn't have the benefit of revenue validation from Lawrenceburg for 1996. Commissioner Peyton stated that he wanted to concentrate on the project. During the March Commission meeting, he questioned the operating margin of 26%, which he felt was high for a company in their segment of the market. If Argosy were to obtain the industry's average operating market of 18.9%, based on a survey of approximately 20 companies in Argosy's niche of the market, they would need to cut $5 million from the cash flow. This means their cash flow would decrease from $16.25 million to $12 million. Casino revenues are projected to be in the $60 - $70 million range; however in the first application, Argosy projected revenues in the $30 million range. Commissioner Peyton conceded that the $60 - $70 million range is probably more realistic in terms of what the market surveys indicate; however he feels the margin of error for the project is gone. In the current application, Argosy is indicating that everything would be alright, but Commissioner Peyton asked what would happen if the market changed, or additional competition. He pointed out that at Argosy's year-end, with the exception of Lawrenceburg, nearly every market Argosy operates in the revenues are declining, but does not attribute this to poor management. This is occurring with other gaming companies as well. Commissioner Peyton pointed out that as markets are saturated with more and more entertainment opportunities, he sees a trend and does not feel they can maintain a 26% operating margin. He noted their overall corporate operating margin for 1996 was close to the industry average of 18%.

Mr. Uram stated that Commissioner Peyton's observations about the relevance of the market statistics in relation to margins is accurate. He explained that Argosy had an operating margin of 42% in Alton, Illinois, when they had a monopoly in 1992. For 1993 - 1995 their margins as a company in markets that were competitive, but not brutal, ranged from 31% to 34%. Mr. Uram stated that their operating margins in brutally competitive markets are 21%. He went on to note that when Argosy was competing with three other licensees in Riverside in 1995, they had an operating margin of 31%. When the Kansas City market became over saturated in 1996, they had a margin of 18%, and Argosy was the second highest among the five applicants. Mr. Uram stated that Argosy believes they can meet the margins based upon their history.

Mr. Uram noted that as this project is proposed for a lake, costs of construction will be greater and present a greater financial risks for lenders as the boat can not be moved to another location. Mr. Roberts noted that the Argosy would have a 19.5% tax rate in Osceola, while they have a 45% tax rate in Lawrenceburg which will be beneficial to them in reaching the projected operating margin.

Commissioner Peyton pointed out that circumstances never remain the same. In comparing the current application with the previous application, he noted that the market place has changed immensely, and feels it is naive on everyone's part to assume that state and local taxation will stay the same. He feels that by the time this project is ready to begin operations, a minimum of 18 months, the operating margins will have declined even further.

Mr. Norton stated that the operating margins have continued to decline because of increased competition. He noted that in three of the states in which Argosy operates, the number of operations are established by the legislature, but in Iowa, the state, and possibly the Commission, are indicating that they do not want to see an expansion of gambling which would preclude any more competition for their project in central Iowa. Mr. Norton noted that the cash flow analogy deals with new competition which they don't expect in central Iowa.

Commissioner Peyton stated that Argosy could do substantially better than average and still encounter problems. Mr. Uram indicated that the projections included in the original application were very conservative, and the projections included in the current application were doubled as they have the benefit of being able to study the revenues at Prairie Meadows. If they have an 18% operating margin, Argosy would still be able to cover their interest expenses.

Commissioner Whittenburg, after having visited the site last month and noting the proximity of the railroad tracks to the site, asked about the frequency of train travel, how many trains pass through the area in a day, and what arrangements had been made for the safety of the patrons who would be visiting the facility.

Mr. Keller stated that Argosy had reviewed the existing at-grade crossing for the Burlington Northern track. He noted there is a grade elevation change as individuals pull up to the tracks. Argosy would make some changes to improve visibility by removing some trees and doing some re-grading. The railroad has requested that Argosy provide signals, arms, bells and lights at that intersection. He was not sure of the number of trains which passed through each day. Commissioner Whittenburg stated that she had been told fifty with two of those being Amtrak trains. Based on their study of the current situation, Argosy feels they have room to stack approximately 20 cars before they would begin remaining in the deceleration lane. They would also revise the crossing grade at the point it crosses the railroad tracks. Argosy has sufficient land to create a four-lane right-of-way which they would finance.

Commissioner Whittenburg asked with whom Argosy would have to negotiate the above changes. Mr. Keller stated that signalization is within the railroad's right-of-way . He noted that since this is an existing vehicular crossing, and the use of the crossing is not being changed, the DOT would not be involved. The DOT would be involved with the deceleration lane and any impact the

proposed changes would have on Highway 34. Mr. Keller stated that the railroad would not argue with anyone who wants to signalize, protect and improve an existing at-grade crossing.

Commissioner Whittenburg asked Mr. Keller to explain any conversations he might have had with the Iowa Department of Transportation (DOT) regarding the changes which would need to be made to Highway 34. Mr. Keller indicated there is currently sufficient right-of-way on Highway 34 to widen it and create a turning lane; however, Argosy does not feel there is sufficient travel on the road to warrant the widening to the point that DOT would be interested in participating in that project. At the present time, Argosy feels that the deceleration lane coming from the east, the improvements to the intersection to provide sufficient stacking room, and the signalization of the railroad track is sufficient to cover the traffic requirements at the present time.

Mick Breda, of Veenstra and Kimm Engineers, advised the Commission that during the previous licensing attempt numerous discussions were held with Dave Ellis and Tom McDonald from DOT's district office. Several entrance possibilities were investigated, and determined that the deceleration lane and right hand turn lane were good as there is relatively little traffic west of I-35 on Highway 34. Additional turn lanes, more signalization of the intersection, etc. will depend on certain requirements of the state being met as they do not want to overbuild intersections unless warranted by traffic.

Commissioner Whittenburg noted that a hotel was a part of the original application, and one of the criteria to be considered in the granting of a license is shore development. Mr. Roberts advised that when Argosy first looked at the project two years ago they felt a hotel would do well and that has not changed; however, there are two new hotels being built at the intersection of I-35 and US Highway 34. Argosy wants to give those businesses an opportunity to develop their business, and will wait and see if there is sufficient market for them to build their own hotel without adversely affecting them.

Mr. Norton indicated that Argosy will need more in the way of support facilities in order to provide shows and entertainment which were not contemplated in the original application. They will spend the same amount of money, but will put those funds toward the construction of the boat and the support facilities. Once the above hotels are operating successfully, they would like to build their own hotel adjacent to the facilities. Argosy is in the process of acquiring additional land which could also be developed (shopping center, golf course, etc).

Commissioner Whittenburg noted that the first application contained references to future development possibilities like a golf course, RV park, etc. Mr. Norton stated that he felt Argosy would proceed with an RV park. He indicated that some of the possible additions to the site could be accomplished with other developers.

Commissioner Whittenburg, noting that Argosy is requesting a license in the best market left in Iowa, asked how Argosy intended to compete with Prairie Meadows (PM) when they are located 48 miles to the south on a small lake with a pavilion and boat. Referring to the amount of shore development in Council Bluffs, Commissioner Whittenburg stated that she feels Argosy is asking for a lot without giving much back to the community along the line of shore development.

Mr. Norton noted that the Council Bluffs properties were doing well even before the hotels opened, and that Ameristar still had some projects which were not completed after 14 months of operation. Commissioner Whittenburg noted that all of the projects were committed to in the application. Mr. Norton noted that Council Bluffs licensees have a larger market whereas Argosy will be in a general market area on I-35 providing the opportunity to attract travelers on the interstate system. For financing reasons and the size of the revenues projected, Argosy does not feel that the project justifies more than $60-$70 million commitment but that does not mean they won't expand the project. He advised the Commission of the expansion which has occurred at their other projects. The original cost for Lawrenceburg was between $40 and $60 million, but has grown to $225 million. The main issue to be addressed at this time is the financiability of the project. Other projects in and around the facility can be accomplished with other developers.

Mr. Uram indicated that Argosy has tried to develop a facility which is the right size for the market. The project will have a dining buffet which will seat 300 people, a steakhouse, and entertainment facilities unlike anything currently in the state. In the gaming industry, food is considered part of the entertainment. With their experience in their other operations, they have learned the importance of entertainment, particularly on the weekends, and have included that in their current application.

Commissioner Allen advised that the Commission is not discussing a license for Council Bluffs, but Osceola in Clarke County. She commended Argosy on the conference center which is part of the project as there currently are no facilities large enough to hold a conference or convention. Mr. Norton noted that any hotel rooms which they might build in Osceola would be too far from the Des Moines area to be used for any conferences or conventions held in the area.

Commissioner Whittenburg stated that she was not implying that Argosy should build facilities similar to Council Bluffs. She noted that Mr. Norton had given examples of how they had expanded their other operations in other states, but asked him to tell her how they have expanded the operation in Sioux City.

Mr. Norton advised the Commission that when they assumed operations of the facility, the operation was winning between $300,000 - $400,000 per month. Argosy brought in a larger vessel and the revenues have increased 600%. He noted that competition had increased even more, resulting in the Sioux City facility operating at a loss. Part of the problem is the tax structure with the local non-profit. Sioux City has a population of 100,000, and the two Native American casinos are also

focusing on the Sioux City area for patrons. They do not have to pay taxes, while Argosy has an effective tax rate over 30% which makes it difficult to compete on an equal basis. The Sioux City market area is much different than Des Moines and Council Bluffs. Mr. Uram added that in addition to bringing in a large vessel, Argosy has upgraded the dining capacity in Sioux City.

Commissioner Allen, noting Commissioner Whittenburg's comment that Osceola would have competition from PM, asked if the Osceola project would be able to offer more in the way of gaming since they would be able to have table games. Mr. Norton noted that individuals who like to play table games in central Iowa have to travel to Tama or one of the riverboats in order to do so. The riverboat in Osceola will have a different ambience than a horse track with slots. He stated that the track in Council Bluffs was doing $12 million on its own, but that all three operations are doing $21 million.

Commissioner Whittenburg asked if the vessel would have two or three decks. Mr. Uram indicated that the final design has not been selected at this time, and will not be decided until the final bids have been received. Mr. Norton stated that the gaming positions would be relatively the same regardless of whether the vessel was two or three decks.

Jeff Farrell, Assistant Attorney General for IRGC, asked why Argosy was using project level financing instead of corporate level financing in light of the fact that project level financing is more costly than corporate level financing. Mr. Robert advised that under the terms of their current trust indenture of $235 million, there is a contract between the bondholders and Argosy Gaming Company with one of the provisions being that Argosy (the parent company) can not guarantee any further debt subject to limitations until the $235 million is repaid. The financing for the Osceola project will be focused on the assets of the project.

Mr. Farrell, referring to Mr. Waldron's comments about the number of investors and possible terms if Bear Stearns provided the financing, asked what other terms the bondholders might be interested in other than to share in the earnings, and if they would impact the funding control of Argosy or Argosy's management. Mr. Roberts stated that in prior negotiations on bond covenants, Argosy has been sensitive to the fact that they are a regulated company, that the Commission is charged with the responsibility of knowing who participates in the profits, and should a covenant rise to the level of profit participation, they would have to bring the issue before the Commission before it could be finalized.

Mr. Waldron advised that the covenants are generally financial in nature, and speak to the ability of the company or project to incur additional debt or pay dividends, or do transactions with affiliates or sell assets. There usually are no covenents which address management control of the company. There is one covenent in all transactions which states that if control of the company changes, the

bond holders would have the opportunity to turn in their bonds. The bond holders would have no control over the company.

Mr. Farrell asked Mr. Waldon what the interest rate would be if financing was obtained through the use of junk bonds. Mr. Waldron indicated it would be approximately 15+%, but that it was difficult to provide a definite rate without having all of the bids back.

Mr. Farrell asked Mr. Uram to explain the decline in Argosy's stock price from $30 to its present level of $3. Mr. Uram stated that the stock traded in the $30 range shortly after the company went public in February 1993. Multiples for new jurisdictional gaming companies were significantly elevated by approximately 200% from what they are today. This is partly due to the fact that four years ago there was a belief that every state would legalize gambling; that has not occurred, resulting in the reduction of stock prices. Mr. Uram noted that Harrah's stock price has gone from the high $30s to the low teens.

Terry Hirsch, Director of Riverboat Gambling for IRGC, asked if the bond financing of the Osceola project precludes the same type of management contract in Sioux City from happening in Osceola or is it the intent that management would take the first 4 ½% of gross off the project. Mr. Uram noted that the Sioux City project is a partnership so Argosy is compensated for their management efforts. The Osceola project, as currently structured, is not a partnership. Mr. Waldron noted that since this project will be financed with project financing, the bond holders will want to maintain the cash in the entity.

After a break for lunch, the meeting reconvened at 2:20 pm, and Chair Sealock requested that the Commissioners voice their opinions regarding the application. She asked Commissioner Hansen to start the process.

Commissioner Hansen noted that in 1983 illegal betting nationally was around $8 billion; increased to $84 billion in 1995, and rose to approximately $100 billion in 1996. These figures point to the growth in gambling, but pointed out that in 1960 there were 123,000 arrests for illegal gambling representing about 3% of the national crime. In 1996, there were 15,000 arrests which made up less than 1/10 of 1% in spite of the fact that illegal gambling had grown by almost 800%. These figures indicate that elected officials and individuals have changed their focus from illegal gambling to drugs. Commissioner Hansen voiced his opinion that prohibition failed because it was a public policy trying to outlaw something which the public had an inclination toward. Finally, it was determined to regulate the industry in order to provide more control. He feels this is the tactic that should be used with gambling. He noted that the Legislature gave the Commission the authority to choose the number, location and type of gambling to be authorized; however the Commission has never set an absolute maximum number of licenses to be issued. Now the Governor and the Legislature have come forward and stated that they favor a moratorium on the issuance of gaming

licenses, but have indicated that the Commission should be able to vote on Osceola and Keokuk. He noted that the original Senate bill would have prohibited the Commission from hearing the applications from Osceola and Keokuk. Commissioner Hansen stated that many of the questions surrounding the application relating to environmental issues have been resolved over the last month, as well as the financial issues. He stated that he feels the applicant has given the Commission a clear indication that they have several alternative vehicles for financing the project. He does not want to delve into stock prices, and end up micro-managing. Commissioner Hansen indicated that a financial statement should not be viewed for a narrow period of time, but over the long haul. If the Commission were to look at other licensees on a short-term basis, there are approximately five which could be brought before the Commission on financial issues.

Commissioner Whittenburg stated that the criteria which have been set forth in the rules and regulations are what she uses in determining whether or not a license should be granted. After reviewing the various aspects of the application, she has singled out the following criteria which she is most interested in:

1) Iowa Administrative Rule 491-21.10(3) Boat viable and properly financed. The commission will consider whether the proposed boat is economically viable and properly financed.

2) 491-21.10(6) Efficient, safe and enjoyable for patrons. This is the criteria on which she based her questions regarding the railroad tracks and the roads. She is concerned that there will be safe ingress and egress from the property. She expressed her appreciation for the material distributed during the meeting, but felt that the material should have been included in the application.

3) 491-21.10(10) Community support.

4) 491-21.10(17) Shore development.

5) 491-21.10(18) Body of Water which has several different sub-issues to it, one of which is whether the body of water is adequate to accommodate any large commercial excursion boats, the environmental risks and the consequences should an accident occur.

There are so many hypothetical issues which really can not be determined until the number of patrons are known, how large the boat will be, and how it will work on the lake. There are too many uncertainties in these important areas to give me a level of comfort. She stated that she felt the community support had waned since the first application. Since January 15th, she has received 83 letters opposed to the boat and one letter in support of the boat.

Commissioner Whittenburg noted that the most important issue is the financial viability of the project. The gaming industry is a highly regulated industry for many reasons, some of which are

morality and the high taxation placed upon licensees in the state. She stated that the Commission is the one who is ultimately responsible to the citizens of the state if a boat should fail. Commissioner Whittenburg noted that during her three years on the Commission, more projects than ever began operations, but the gaming climate has gone from a very restrictive one to a very liberalized one. The Commission has expected and extracted more from each licensee that has been granted the privilege of a gaming license. She also noted that the Commission needs to keep in mind that gaming did pass by a very slim margin, and should be mindful of those individuals who are not in favor of gaming as a form of entertainment. For those who do want gaming, the Commission should have the best facilities possible. Commissioner Whittenburg stated that she feels Iowa has one of the last lucrative markets in the area, and if another license is granted in central Iowa, it should be granted to a company that is going to commit to the highest caliber of project possible for Iowa.

Before starting her comments, Chair Sealock advised those in attendance that when the Governor first launched the idea of a moratorium, it was a topic of discussion during a quarterly meeting with the Governor, Commissioner Whittenburg and herself. They discussed saturation, and the state survey which found that 90% of Iowa residents are against expanded or more gaming; but also reminded him that Osceola had been given the idea that they would be given another opportunity, as had Keokuk. Chair Sealock stated that they advised the Governor that if he proceeded with the moratorim, Osceola and Keokuk, in all fairness, should be allowed to submit another application to the Commission.

Chair Sealock presented her comments regarding the Osceola project, noting that she had spent a considerable amount of time thinking about the project. During her recent visit to Osceola, she did not see a depressed community - there were only two downtown stores which were empty. It is Governor Branstad's goal to maintain Iowa's rural background; there is no intent to turn Iowa into another Nevada, New Jersey or any other state which would erode Iowa's values. Chair Sealock noted that the financial viability issue is very critical and has been addressed and readdressed. She asked everyone to keep in mind that the Commission is being asked to take a risk. When she reviewed the commitment letter with her husband, who was an investment banker for 30 years, he informed her that the letter demonstrated just how much risk is involved in the project. The unemployment figures for the area fluctuate depending on who you talk to. Argosy is offering the non-proft $0.25 for each patron who boards the boat which is less than any other non-profit in the state is being paid. As the gaming industry has grown in Iowa, the standards expected from the non-profits have also expanded. Chair Sealock also expressed concerns over the conflicting information the Commission has received regarding the West Lake Reservoir. She provided a brief history of Argosy's history in Iowa, and the Sioux City license. She concurred with Commissioner Whittenburg's comments that the proposed project for Osceola is not commensurate with the area's ranking as the second largest gaming market in the state. Chair Sealock noted that in reviewing the market study, only 3% of the patrons will be coming from Clarke County and 66% of the market for

the proposed casino is in Polk County, Dallas County and the counties surrounding Polk County. Chair Sealock stated that Argosy would need to have exciting, competitive attractions in order to draw patrons from this area. The original application contained beautiful architectural renderings. The day of the vote, Argosy eliminated the golf course and shopping center, as well as the exit and overpass which would have provided safe ingress and egress to the facility. Argosy has eliminated the hotel in the current application, and she understands why Argosy has taken that particular action. Chair Sealock noted that the current application contains less in the way of amenities and shore development, but will cost more to build than the original application. The boat configuration is unknown to everyone at this time, but will cost $7 million more. Chair Sealock went on to state that the concept of having a boat on a lake was different than what was anticipated when riverboat gaming was legalized, and is an expansion of gaming. If the legislature does not approve the moratorium, this could open the door for numerous other applications for riverboats to be placed on small bodies of waters. Chair Sealock indicated that she was not sure what events occurred to allow this type of project to come before the Commission. She felt that public sentiment and political connections allowed Argosy to be able to submit an application which offered less. The Commission has always tried to be consistent and fair. She stated that all of the applications which have come before the Commission to date have been held to the same standards of financial viability and quality for the market they were going to service. Chair Sealock stated that she was not willing to compromise and lower the standards for Osceola.

Commissioner Peyton started his comments by noting that this process is not a public referendum on the morality of gaming in Iowa, whether or not Iowa needs more gaming or if there is too much currently, or other policy considerations. He noted that he believes there are proper roles for different governmental bodies, and as a regulator it is not his place to substitute his personal beliefs for the Legislature. He stated that he is sensitive to some of the concerns expressed, and shares some of those concerns but that the proper place to raise those issues is with the Legislature. Commissioner Peyton addressed the public support issue. He noted that the Commissioners do receive a considerable number of letters, but feels it is a mistake to "weigh the mail bag" because anyone can mount a letter writing campaign which could change the result. The democratic process requires that some faith be placed in the referendum process, and in Osceola's case, the best evidence of public support is that 70% voted in favor of allowing this project to proceed. Commissioner Peyton stated that he does not feel that a negative outcome would be an indictment of either Osceola or Argosy. The people of Osceola are enthusiastic and have as much zest for this project as any group of people he has ever seen, and are justifiably proud of their community and what they have accomplished regardless of the outcome. Commissioner Peyton indicated that he does not put a lot of stock in stock analysts as they analyze a company's prospects for the next twelve months and whether or not any money can be made in buying and selling their stock. This doesn't have much to do with the viability of a particular project. It has been his experience that for every analyst that gives a positive view; one can be found who will give a negative view.

Commissioner Peyton went on to state that this process is about determining whether or not this project is viable or meets the requirements of the statute. He stated that he has looked at all of the different criteria which the Commission is bound to consider when granting a license, and has determined that Argosy has met all of the criteria except one. He is not convinced that the project is financially viable given the current market conditions. He noted that two years ago he felt quite strongly that Argosy's application met the minimum standards of the statute - the projected revenues were conservative (one-half of the current application), the parent company was willing to finance almost 100% of the project which allowed for a small margin of error. He felt there was little chance that the project would fail, and that the application should have been approved. Commissioner Peyton noted that, in his experience, the cost of capital usually is reflective of the risks involved. He feels that the fact that the project, which would be financed with junk bonds, is already in trouble because the cost of capital and the cost of financing the project threatens its viability. He stated that given the current market conditions and trends he sees in Iowa, revenues slipping, increased gaming positions both in and outside of the state, and more opportunities to gamble; he does not feel their projected revenues will hold for any length of time. Commissioner Peyton stated that he could not support Argosy's current application.

Commissioner Allen stated that in considering whether or not to approve the riverboat application for Argosy, she submitted the rationale for the application to a litmus test. She noted that even though some questions concerning the project had come up today, it was correct to state that with the exception of Argosy's questionable financial status, the project would be viable. She indicated she is aware that many feel gambling in Iowa has reached a saturation point which has been brought home by the passage of the Senate moratorium bill; however, the legislators left the door open for the Commission to consider the applications of both Osceola and Keokuk. She feels the Commission has been preferential in the granting of gaming licenses to those communities situated on the navigable rivers and connected to a racetrack. Commissioner Allen noted that this situation was corrected last year when the Commission's rules were revised to allow riverboats on inland waterways. She agreed that this is an unusual concept, but so is the concept of boats on the river which spend more than 95% of their existence tied to the shoreline. This is the first time, and maybe the last, the Commission has an opportunity to send a message that gaming, regardless of whether or not this application is approved, should not be relegated to a few. The economic benefits, as well as the drawbacks, should be available to all Iowans. She noted that Clarke County referendum has passed by nearly 70% - one of the largest approval ratings ever in a gaming referendum. Commissioner Allen stated that Osceola and Clarke County have given Argosy their "TLC" with regard to this project - trust and confidence that they will complete the project, and loyalty for each other by returning for a second attempt at gaining a license. She agreed that Argosy's financial status is questionable; they are financially overextended, but that it appears their Kansas City facility will be one of the survivors in that market. She stated that Lawrenceburg has all of the makings of a lucrative operation with every likelihood of rejuvenating the company's overall financial status. Commissioner Allen stated that if the application is viewed objectively, the Commission must accept

the fact that the Osceola project is viable. Commissioner Allen stated that she would vote in favor of granting Argosy a license so they could seek additional financing if necessary, and have a fair opportunity to seek the best possible financial sources. In her opinion, the single most important issue before the Commission today is whether or not the citizens of Osceola want a gaming operation in their community, and whether Argosy has the ability to finance that project. She feels that Argosy has demonstrated their ability to do so. It is her belief that the partnership between Osceola and Argosy will make their joint dream a reality. She noted that even if the Commission gave the application a perfect score; there would be no point in proceeding without the citizen's approval. Commissioner Allen concluded her remarks by stating that she would vote in favor of the project.

Chair Sealock called for a motion regarding Clarke County Development Corporation/Argosy of Iowa's application for an excursion boat gambling license. Commissioner Allen moved that the application be approved. Commissioner Hansen seconded the motion. Chair Sealock requested a roll call vote. Chair Sealock, and Commissioners Peyton and Whittenburg voted no; and Commissioners Allen and Hansen voted yes. The motion failed on a 3-2 vote. At this time, based on parliamentary procedure, Commissioner Hansen requested permission to change his vote from yes to no. He indicated that the change in his vote was strictly for parliamentary reasons. Chair Sealock granted his request. (See Order No. 97-52)

Chair Sealock moved on to Dubuque Greyhound Park and Casino (DGP&C). Bruce Wentworth, General Manager of DGP&C, advised the Commission they were submitting their purse agreement with the Iowa Greyhound Association (IGA) for approval. He noted the agreement before the Commission is a two-year agreement which calls for 7% and 7 ½% of casino revenues to be devoted to greyhound purses. Mr. Wentworth advised the Commissioners that the IRGC office was in receipt of the original signed agreement.

Hearing no further comments or questions concerning the purse agreement between DGP&C and IGA, Chair Sealock called for a motion. Commissioner Whittenburg moved to approve the purse agreement as submitted by the parties. Commissioner Allen second the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-53)

Chair Sealock called on Racing Association of Central Iowa/Prairie Meadows (RACI/PM) to give a progress report regarding an agreement on the use of the facility and relationship with Polk County once the debt on the facility has been retired. Bob Farinella, General Manager of PM, advised the Commissioners that RACI/PM and Polk County have agreed to wait until the end of the legislative session in order to see what occurs with the various gaming bills under consideration. Both parties are committed to putting together a working relationship which will satisfy the requirements of the Commission. He indicated that all are cognizant of the fact that RACI/PM will have to renew both their pari-mutuel and casino license in the fall, and that they will only have 3-4 months to reach an agreement. Liza Ovrum, Assistant Polk County Attorney, concurred with Mr. Farinella's statements.

Chair Sealock indicated that an agreement between the two parties would be very good for the industry and state.

Mr. Ketterer asked Ms. Ovrum if the city has received a preliminary appraisal and whether or not they have received the IRS ruling regarding the effect a sale would have on the tax-exempt bonds. Ms. Ovrum stated that Polk County has not received the appraisal, but do expect to receive it later in the month. Regarding the ruling from the IRS, she noted that the IRS had changed their rules effective May 1st. Under those rules, Polk County could pay a "closing agreement" amount which would be the discounted interest amount due on the outstanding general obligation bonds. At today's discounted rate, that would be around $3.2 million to the IRS which would allow the facility to be sold without jeopardizing the tax-exempt status of the bonds.

Mr. Ketterer asked if Polk County and RACI/PM could begin working on a resolution earlier than anticipated since they have received the IRS ruling and expect to receive the appraisal yet this month. Ms. Ovrum indicated that the County has requested an economic impact study to determine the effects on Polk County and central Iowa if the facility were sold to an outside company. This study is under way at the present time.

Chair Sealock called on Bluffs Run Casino (BRC) to address their various agenda items. Barry Sevedge, Director of Operations, Diane Ostrowski, Public Relations and Advertising Manager, and Eric Wilson, Director of Compliance, were present to address any concerns of the Commission. Mr. Wilson presented the Commission with BRC's Community Awareness and Action Plan for deterring underage gambling. The plan contains three elements - educational awareness, deterence, and enforcement. Ms. Ostrowski stated that the plan is designed to incorporate new strategies and enhance existing strategies to promote community awareness among the public and employees of the problem, deterrent efforts and punishment of underage gamblers. The awareness phase of the plan calls for public service announcements to be made on the radio, continued participation in the Project 21 scholarship program, as well as getting the message out via the local media. Their deterrent strategy includes increasing employee training, increased signage, and formalization of the Zero Tolerance Policy. In the punishment strategy, Ms. Ostroski noted they are working closely with local law enforcement officials to insure that those underage individuals who attempt to gain entry to the casino are cited and punished.

Chair Sealock asked Ms. Ostrowki how many school districts, not schools, that were participating in the Project 21 Scholarship program. Ms. Ostrowski indicated there are anywhere from 12 to 16 school districts participating by either writing essays or designing posters. The students are eligible for a $10,000 scholarship.

Mr. Sevedge addressed the landscaping plan. He advised the Commission that bids had not been received timely enough to allow him to bring a contract before the Commission. He advised the

Commission that BRC intends to proceed with the basic landscaping as outlined in their previous contract and come before the Commission at the May meeting with a contract for some enhancements and changes to the original landscaping plan. Mr. Sevedge stated that the parking lot is about 95% complete, all of the curbs are in and the asphalt is just about done. The RV project, which they hope to open in June, is about two weeks ahead of schedule, however, if they can't get the asphalt completed before the river levels rise to high, they could end up behind schedule.

Mr. Wilson addressed the escrow negotiations with IGA. He stated that the parties have agreed to meet on April 29th to discuss some preliminary proposals and will give a report at the May Commission meeting as to progress in those discussions.

Mr. Wilson advised the Commission that the live handle for the first week of April stayed about the same, possibly a little higher. The exported signal doubled and the import signal was in the $65,000 range. The initial look indicates there is some new money coming in; but feels it will take another two or three weeks to get a better feel for the situation. Mr. Wilson stated that he was very impressed with the way the export handle has almost doubled from where they have been for the last three months. BRC has established a greyhound simulcasting area in the grandstand, and installed 33 table top TVs.

Chair Sealock asked if the revenue would continue at its present levels if it would be beneficial for BRC to continue to offer simulcasting. Mr. Wilson indicated that it would. The export handle of $210,000 was approximately $100,000 higher than it has been. At that level, it is still a loser; however, if the import is new money that is increasing the wagering excitment and helps to build the purse pools for the live handles which should increase the excitement for the live races. He is continuing to look at various sites to send BRC's signal. The change from a Tuesday night race to Tuesday afternoon performance resulted in an approximate $4,000 decrease in live handle, however, they had almost $19,000 in import handle for a gain. Mr. Ketterer congratulated BRC on their efforts in this area.

Chair Sealock moved to the Contract Approval portion of the agenda. She called on Catfish Bend to present their contracts for approval. Dan Kehl, General Manager, and Bob Winkler, Assistant General Manager, submitted the following contracts for Commission approval:

- Acme Business Machines, Inc. - Point of Sale System
- Food Service Equipment Corp. - Kitchen Equipment
- Hall Towing, Inc. - Docksite Improvements, Including Pier
- Smith St. John - Dining Room Furniture

Hearing no further comments or questions regarding the contracts, Chair Sealock requested a motion.

Commissioner Whittenburg moved to approve the contracts as submitted. Commissioner Hansen seconded the motion which carried unanimously. (See Order No. 97-54)

Chair Sealock called on Lady Luck Bettendorf to present their contracts. Shawn Ellis, General Manager, and Curt Beeson, legal counsel, presented the following contracts for Commission approval:

- Forest Grove Farm Repair - Mechanical Repairs for Boat
- LaCrosse Acoustical Tile, Inc. - Ceiling Tile
- Paulson Gaming Supplies - Dice and Cards
- Robertson Builders, Inc. - Construction of Midship Bar, Mad Money and Coin Cage Booths
- Ryan Companies - Interim Agreement for Services to be Completed by 4/30/97 and Contingent Additional Costs
- Sentry Bevcon - Beverage Dispensing System

Mr. Ellis indicated they hope to have the final plans for the hotel before the Commission at the May meeting.

Commissioner Peyton noted that one of the out-of-state contracts contained an explanation for the out-of-state vendor; but that the others did not. Mr. Ketterer reminded Commissioner Peyton that the explanation was no longer required under the new guidelines established where the licensees would submit their purchasing policies to the office. Compliance with the statutory requirement for preference to Iowa vendors would be analyzed on an annual basis in conjunction with the review of applications for license renewal.

Hearing no further comments or questions regarding the contracts, Chair Sealock requested a motion. Commissioner Allen moved to approve the contracts as submitted by the licensee. Commissioner Whittenburg seconded the motion which carried unanimously. (See Order No. 97-55)

Chair Sealock then called on The President. Mark Lohman, General Manager, presented the following contracts:

- Firstar Bank Iowa, N.A. - Extension of Credit Agreement
- John Keady Cadillac-Pontiac, Inc. - Four 1997 Cadillac Sedan DeVilles

Hearing no comments or questions regarding the above contracts, Chair Sealock requested a motion. Commissioner Hansen moved to approve the contacts as submitted by The President. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-56)

Chair Sealock then called on Harveys to present their contracts for approval. Art Hill, Controller, presented the following contracts:

- Anderson Construction - Restaurant Construction
- Lucent Technologies - Installation of Telephone and Data Lines
- RDG Schutte Wilson - Architect Fees
- U.S. Axminster - Carpeting in Restaurant
- Valley Fixtures - Fixtures/Laminates in Restaurant

Mr. Hill advised the Commission that he would submit a revised contract approval form for Anderson Construction which would properly indicate that the contract was a related party contract as Mr. Anderson serves on the Iowa West Racing Board of Directors.

Hearing no further comments or questions, Chair Sealock requested a motion regarding the contracts submitted by Harveys. Commissioner Peyton moved to approve the contracts. Commissioner Whittenburg seconded the motion which carried unanimously. (See Order No. 97-57)

Mr. Hill stated that the restaurant, the subject matter of the majority of their contracts, should be open by the next Commission meeting. Verne Welch, General Manager, issued an invitation to the restaurant's grand opening on April 21, 1997. He also offered the Commissioners a tour of the restaurant following the conclusion of the meeting.

Chair Sealock called on DGP&C to present their contracts for Commission approval. Mr. Wentworth presented the following contracts:

- American Trust & Savings Bank - Amendment to Bank Loan
- The Friedman Group, Inc. - Directors and Officers Liability Insurance; Employment Practices Liability Insurance
- Herrig & Fritz Insurance - Property & Casualty Insurance

Hearing no further comments or questions, Chair Sealock requested a motion. Commissioner Whittenburg moved to approve the contracts submitted by DGP&C. Commissioner Allen seconded the motion which carried unanimously. (See Order No. 97-58).

Chair Sealock then called on PM to present their contract for approval. Mr. Farinella advised the Commission that this is an information only item. He indicated that a local vendor is attempting to purchase the horse walkers from the current owners who are located in Stillwater, Minnesota. If she is able to obtain financing, and all of the details can be finalized, PM will bring a contract to the May Commission meeting.

Chair Sealock called on Mr. Ketterer regarding the Stipulation between IRGC and Catfish Bend Casinos (CB) to resolve various regulatory violations between November 16, 1994 through December 31, 1996. The allegations stem from an intoxicated patron who was allowed to continue gambling. During the investigation, numerous interviews resulted in conflicting testimony which is one of the reasons why it took so long to resolve this matter. The Commission found violations of IRGC rules and regulations relating to camera malfunctions and breakdowns in Catfish Bend's surveillance department during the investigation. It was found that the Surveillance Director did not take the necessary steps to bring CB into compliance when the violations were discovered. There was evidence that the management of CB did not have any knowledge of the extent of the malfunctions. Mr. Ketterer noted that all licensees are charged with the responsibility of advising the Commission of all incidents, violations of Internal Controls or IRGC rules and regulations. CB failed to do so. The Commission has a responsibility to monitor each licensee to maintain the integrity of gaming in Iowa. This stipulation does take into consideration the fact that CB did purchase and install new surveillance equipment when the violations were found and has implemented stricter reporting requirements of any malfunctions and has instituted a program to train their employees to prevent future incidents of intoxicated patrons being allowed to gamble. Mr. Ketterer advised the Commissioners that a full hearing in this matter could have lasted four or five days. He noted that the $250,000 penalty is severe, but is sufficient to deal with the problem. CB has taken the necessary measures to correct the situation. Mr. Ketterer asked the Commission to approve the Stipulation.

Chair Sealock called for any questions or a motion. Commissioner Peyton asked what had happened to the employee. Mr. Ketterer advised that CB had terminated the employee. Had he not been terminated, the Commission would have suspended or revoked his occupational license, or issued a fine. The individual has not been employed in Iowa since 1995.

Commissioner Whittenburg asked if this was the largest fine ever imposed by the Commission. Mr. Ketterer indicated that it was.

Hearing no further comments or questions, Chair Sealock called for a motion. Commissioner Whittenburg moved to approve the Stipulation between CB and IRGC. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-59)

Chair Sealock moved to the hearing for the President Riverboat regarding a violation of Iowa Code Section 99F.9 (Wagering - Age Restrictions). Mr. Ketterer advised the Commissioners that a 19-year old had gained entrance to the boat on March 15, 1997 when a security guard's attention was diverted by another patron. Surveillance tapes indicate the individual play video poker for approximately 2 hours, and hit a jackpot. The fact that the individual was underage was discovered when ID was requested for income tax purposes. The length of time the individual was on the boat,

as well as the President's lack of any previous violations in this area, were taken into consideration in determining the amount of the fine. The President Riverboat has voluntarily entered into an agreement with Harrah's to participate in Project 21. Mr. Ketterer requested that the Commission approve the Stipulation.

Hearing no further discussion or comments, Chair Sealock requested a motion. Commissioner Hansen moved to approve the Stipulation between President Riverboat and IRGC. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-60)

Chair Sealock moved to Administrative Business. As there was no administrative business to be addressed, Chair Sealock reminded everyone that the next Commission meeting would be held on Thursday, May 15, 1997 at Ameristar's facilities.

Chair Sealock moved to Public Comment. Jane Bell, Public Relations Manager, advised the Commission that Ameristar's project is completed. She noted that the Kinseth Hotel opened last week. She distributed a report on their Project 21 activities.

Chair Sealock thanked the Commissioners for their patience, indulgence and energy. She called for a motion to adjourn. Commissioner Whittenburg moved to adjourn. Commissioner Allen seconded the motion which carried unanimously.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
MAY 15, 1997

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, May 15, 1997 in the Iowa Room of the Ameristar Casino Pavilion, 2200 River Road, Council Bluffs, Iowa. Commission members present were: Rita Sealock, Chair; and members Brad Peyton, Bill Hansen, Jackie Allen and Harold White.

Chair Sealock called the meeting to order at 8:30 AM, and stated that the first order of business would be to approve the agenda. She advised Commission members and those in attendance that there would be an addendum to the agenda, a new item 6 to clarify the motion pertaining to the Clarke County Development Corporation/Argosy of Iowa application. Chair Sealock requested a motion to approve the amended agenda. Commissioner Peyton moved to approve the amended agenda. Commissioner Hansen seconded the motion which carried unanimously.

Chair Sealock introduced The Honorable Tom Hanafan, Mayor of Council Bluffs, who welcomed the Commission to the city. He thanked Nancy Whittenburg, former Commission member, for her time and service to the Commission. Mayor Hanafan thanked the Commission for their hard work in maintaining the integrity of gaming in Iowa.

Chair Sealock indicated there would be no Executive Session, and moved to the election of a new vice-chair. Commissioner Hansen nominated Commissioner Peyton for vice-chair. Commissioner Allen seconded the motion. Hearing no further nominations, Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97- 61)

Chair Sealock requested that Ms. Whittenburg come forward. Jack Ketterer, Administrator of IRGC, recalled her early Commission meetings which lasted well into the early morning hours after which she had to immediately return to her duties as a Magistrate Judge in Spencer. He noted that Ms. Whittenburg was dedicated, and always took the integrity of racing and gaming into consideration when deciding issues. She was willing to speak her mind, but was always a team player. Mr. Ketterer presented Ms. Whittenburg with a gift certificate from Del's Nursery in Spencer and a plaque for her service to the Commission. Chair Sealock concurred with Mr. Ketterer's comments. Ms. Whittenburg expressed her gratitude for the opportunity to be able to work with the Commission and staff, and the ability to meet a group of individuals that she otherwise would not have had an opportunity to meet. Jeff Terp, Vice President of Business Development for Ameristar, thanked Ms. Whittenburg for her service and presented her with a cake in the shape of Iowa on which all locations of licensees were marked.

Chair Sealock moved to the approval of the minutes from the April 8, 1997 Commission meeting. Commissioner Allen requested that the following correction be made: "... This is the first time, and maybe the last, the Commission has an opportunity to send a message that gaming, regardless of whether or not this application is approved, should not be relegated to a geographical few." Hearing

no additional corrections, Chair Sealock called for a motion. Commissioner Peyton moved to approve the minutes as corrected. Commissioner Allen seconded the motion which passed unanimously. (See Order No. 97-62)

Chair Sealock then moved to the contract approvals, and noted that Commissioner Hansen had a few comments to make. Commissioner Hansen asked Chair Sealock if she was going to address the new agenda item pertaining to Clarke County Development and Argosy of Iowa. Chair Sealock indicated the Commission would consider a motion to clarify the motion regarding the above application made at the April meeting.

Commissioner Hansen stated that he had changed his vote regarding the Clarke County/Argosy application as he wanted to be in a position to posture himself for a potential reconsideration based on the hope of an improved situation. However, at this time, he finds it necessary to reverse himself as it has become apparent that Argosy, due to personnel problems and other problems, will never be able to get the necessary votes before the current Commission and has lost his support. Commissioner Hansen stated that he had sympathy for the Clarke County Development Corporation, and feels that the spirited citizens, along with the 70% referendum vote, are deserving of the Commission's whole-hearted support. He feels they are caught in a tangled web, and would like to extricate them from their untenable position with Argosy. It is his intent, through various motions, to extricate Clarke County Development from their ties to Argosy and allow them to proceed with their attempts to bring a riverboat to Osceola. Commissioner Hansen moved to deny the application of Argosy Gaming of Iowa. Chair Sealock called for second regarding the motion. Commissioner Allen seconded the motion.

At this point, Jeff Farrell, Assistant Attorney General for IRGC, asked Chair Sealock if this agenda item had been placed on any amended agenda with public notice. Chair Sealock indicated that it had not. Mr. Farrell expressed his concern that the Commission was intending to take action on an item which had not been noticed to the public, with possible violations of the Open Meetings Law. Mr. Farrell's recommendation was that no action be taken and the matter be placed on the agenda for the June Commission meeting. A lengthy discussion of this issue followed.

Chair Sealock advised that the Commission would adhere to Mr. Farrell's recommendation, and place this issue on the June agenda and take action at that time. Commissioner Peyton asked if the agenda noted that the Commission would consider any issues that comes before it. Chair Sealock indicated that it did not.

Commissioner Hansen indicated that he would abide by the wishes of his fellow Commissioners, but in order to prevent any further problems with proper notice, he noted that his second motion would be to deny without prejudice the Clarke County application which would allow them to proceed with another operator. Commissioner Hansen asked if all issues regarding proper notice had

been covered. Mr. Farrell advised Commissioner Hansen to contact Mr. Ketterer regarding these issues so that they would appear on the next Commission agenda.

Chair Sealock asked Mr. Farrell if the above issues could be laid on the table until the June meeting. Commissioner Hansen advised that he did not wish to lay the items on the table, but would defer until the June meeting. Mr. Farrell stated that Commissioner Hansen could withdraw his motion with the understanding that it will an agenda item for the next Commission meeting. Commissioner Hansen elected to withdraw his motion.

Chair Sealock asked Commissioner Allen if she agreed with the action. She indicated that she did not. She noted that she had never been involved with a Commission or Board, or town meeting where issues could not be added under New Business. She noted that agendas typically include a "New Business" item where new items are addressed. Mr. Farrell indicated that there are items which can be discussed but no official action can be taken. He went on to explain that the difference in this situation is that the Commission would be taking official action on an issue which has not been noticed to the public on the agenda which would prevent anyone from voicing their objections. Commissioner Allen noted that their meeting the evening before for dinner is an open meeting and everyone can be in attendance. Mr. Farrell agreed, but noted that the Commission is not taking any official action. Commissioner Allen reiterated that she has never attended a meeting where an item could not be added to the agenda.

Commissioner Hansen stated that a Commissioner has a right to reconsider a vote, and offer a substitute motion on an issue before the Commission which would be in full compliance with the Open Meetings Law. Chair Sealock indicated that she would have a problem if the Commission took any action which would put them in violation of the Open Meetings Law. Commissioner Hansen indicated he was pursuing this avenue to preserve the right to ultimately object in future meetings so that a precedent is not established. He reiterated his opinion that a Commissioner has the right to reconsider a vote, and offer a substitute vote. It is his opinion that would comply with the Open Meetings Law. Mr. Farrell indicated that issue, if it is possible, should also be placed on the agenda as well. He stated that he has worked with the Commission for four and a half years, during which time the Commission has never taken action on any issue without it first being an agenda item. He noted that discussion items have arisen, but no official action has ever been taken.

Mr. Ketterer indicated that, based on what he had read in the newspapers and seen on television, Clarke County Development is continuing to seek other operators. He does not feel that one month is going to place any hardships on them in their quest to find a new operator. He went on to state that it would not be in the Commission's best interest to make a motion, and pass it, which could be vulnerable to attack due to some question as to whether or not there was due notice. He suggested the issue should be taken up at the June meeting. Commissioner Hansen stated that he did not have

a problem doing that, but did not want this issue to establish a precedence, and that different procedures may be established in the future.

Chair Sealock confirmed that Commissioner Hansen had withdrawn his motion, and Commissioner Allen concurred with the withdrawal.

At this time, Chair Sealock moved to the contract approvals. Commissioner Hansen noted that he had raised a concern regarding the vendor licensing process. He noted that Iowa Code Section 99F.7 requires the Commission to establish standards to assure that a substantial amount of resources used by the licensees are from Iowa. Under the criteria listed for approving an applicant, the Commission is to insure that a substantial number of employees are from Iowa, that the licensee enhances economic development in Iowa, and enhances the sale of Iowa products. Commissioner Hansen stated that he feels the Commission has not adequately performed its duties in this area, and that this has been a concern of his since last August. He noted that the March renewal applications averaged 65% out-of-state purchases which is way out of line with the requirements of the statute. He noted the May contracts average 74.9% from out-of-state vendors, with three of the licensees having 100% out-of-state purchases. Commissioner Hansen stated that remedies need to be pursued. He went on to request that No. 7 on the Contract Approval form be reinstated and ask the licensees to submit a total of in-state and out-of-state purchases.

Chair Sealock asked Commissioner Hansen if he had factored out gaming equipment which is not available in Iowa. Commissioner Hansen indicated that he had not, nor is it addressed in the law. He is amenable to changing the law to exempt those purchases. Commissioner Hansen went on to discuss the number of meat and insurance purchases which are being made out-of-state. Chair Sealock agreed that this issue needs to be addressed, and expressed her appreciation for Commissioner Hansen's research into this area.

After another brief discussion, Chair Sealock suggested establishing a committee to review the contract process, and requested that Commissioner Hansen be the chair of the committee. Commissioner Hansen indicated that he would withdraw his motion if a committee was established. Commissioner Allen agreed to work with Commissioner Hansen. She went on to express her disappointment regarding the vagueness of the descriptions, volume and unit costs on the contract approval forms submitted to the Commission. Chair Sealock directed them to work with staff.

Chair Sealock called on Shawn Ellis, General Manager of Lady Luck, to present their contracts for approval. Mr. Ellis introduced Mayor Mary Ann Hutchinson; Curt Beason, legal counsel; and Alaine Uboldi, President of Lady Luck Corporation. Mr. Ellis showed the Commission a model of the proposed expansion project which will include an overpass over the railroad tracks, a 260-room hotel with 24 suites, a restaurant, parking garage, and 47-slip marina. The expansion will allow Lady Luck to move the Showroom onto the current jetty and gain 300 gaming positions. The expansion will

create 300 new jobs. Mr. Ellis proceeded to submit the following contracts for Commission approval:

- Ryan Companies US., Inc. - Design/Build Contract for design and construction of hotel, car parking ramp, marina, bridge and associated site work
- The Rock Island Bank - Loan Agreement Summary (Lead bank for a consortium of regional banks and John G. Kinnard Co. Investment Securities)
- City of Bettendorf - Tax Increment Financing
- Cement Transportation Corporation - Second Mortgage Loan Memorandum
- Heather Bertroche - Land Lease of Property for Signage
- Green Bridge Company - Purchase of Current Office Space
- Quad City Air Show - Sponsorship
- The Rock Island Bank - Note Agreement to Finance Buyout Option of Sprung Structure Lease Agreement
- Training Systems International - Training Program Development

Mayor Hutchinson stated that the City of Bettendorf is pleased with the proposed project and has been working on a Development Agreement. She noted this is the first time Bettendorf has participated in the financing of anything related to gaming which she feels is an indication of the importance of this development to the City. Mayor Hutchinson spoke briefly regarding the amount of contributions made to the City via the non-profit organization. She feels the overpass is one of the most important aspects of the project as it addresses safety issues and connects the downtown area with the riverboat. She feels the marina will also be a very popular aspect of the project.

Chair Sealock complimented Mr. Ellis on the study he submitted, but advised him there were five boats which opened in 1991, not three as stated.

Commissioner Allen asked Mr. Ellis about the contracts with Cement Transportation Corporation and Green Bridge Company on which he has indicated some common ownership with the Bettendorf Riverfront Development Company(BRDC). Mr. Ellis deferred to legal counsel. Mr. Beason stated that both Cement Transportation and Green Bridge Company are owned by the Goldstein Company, and that four members of BRDC are members of the Goldstein family. There is a provision in the Articles of Organization and Operating Agreement of the limited liability company which states that whenever there is a contract with a related party, then the other party makes the decisions for the limited liability company in order to maintain the arms length transaction.

Hearing no further discussion regarding Lady Luck's contracts, Chair Sealock requested a motion. Commissioner Allen moved to approve the contracts as submitted. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-63)

Chair Sealock then called on Dan Kehl, General Manager of Catfish Bend Casinos, L.C., (CBC) to present the following contracts for Commission approval:

- International Game Technology - License to copy EPROM Programs
- Collins Quality Cleaners - Dry Cleaning Linens/Uniform Rental
- Mike Nelson Concrete Paving Company - Parking Lot
- Pzazz Motor Inn Resort Complex - Hotel Rooms
- Rheinschmidt's Inc. - Carpet & Wallpaper.

Hearing no comments regarding the contracts, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contracts for CBC as submitted. Commissioner Allen seconded the motion which passed unanimously. (See Order No. 97-64)

Mr. Kehl advised Commission members of the fire on the new barge on May 2. The new vessel opened on May 9 as planned. He indicated they were able to save the Human Resource and Accounting records, but lost many of their marketing records. Mr. Kehl thanked IRGC and DCI staff for their support during this trying time.

Chair Sealock called on John Pavone, General Manger of the Belle of Sioux City (BSC), to present their contracts for Commission approval. Mr. Pavone took a moment to thank Ms. Whittenburg for her service on the Commission and welcomed Commissioner White. He advised the Commission of a couple of corrections involving the contracts. The contract with Republic Parking System Inc. shows a figure of $7,100 which is a monthly fee, which translates to a yearly figure of approximately $85,000 per year. He took a moment to address Commissioner Hansen's concerns regarding Iowa vendors. He feels clarification of the contracts is an issue which the licensees need to work on as a group. Mr. Pavone used the valet parking contract as an example. He noted that the company is actually out of Chattanooga, Tennessee, but of the $84,000, $6,000 is paid to the City of Sioux City for rent, and approximately $60,000 is local employee expense. The company only maintains about $1,000 per month in management fees. Mr. Pavone stated the Iowa Riverboat Association was meeting later in the day and one of the agenda items is to try and help clarify the contract issues. They will be forwarding their information to Commissioner Hansen. He also noted that BSC has recently started looking locally for life insurance and other items which previously had been purchased through the corporate offices for all five of Argosy's facilities.

Mr. Pavone submitted the following contracts on behalf of BSC:

- Anchor Games - Lease 4 Wheel of Gold Slot Machines; Lease 4 Clear Winner Slot Machines
- Argosy Gaming Company - Intercompany Charges for February & March, 1997
- Republic Parking System Inc. - Valet Parking Services for Belle Customers & Parking Lot Rent for Corporate Employees

- Unum Life Insurance - Employee Life Insurance Program

Commissioner Peyton asked Mr. Pavone to provide a little more information regarding the inter-company charges. Mr. Pavone indicated that $25,000 of the $32,000 was for Iowa Workmen's Comp charges paid by Argosy and billed back to BSC. The remainder is for corporate travel, phone charges through a corporate agreement for the 1-800 number which is split between the five riverboats, and legal fees.

Commissioner Hansen indicated that he would be willing to meet with the licensees regarding the contract issues. He noted that he is aware of some of the problems the licensees face in securing their products. He feels the gaming industry needs to have more positive press as evidenced by the recent legislative session. One of the pluses has to be the amount spent on Iowa services and goods.

Commissioner White stated that, on the face, the contract with Anchor Games appears to be a revenue sharing contract with an entity who does not have a license. He asked how the Commission knows this represents a normal business transaction. Terry Hirsch, Director of Riverboat Gaming, advised that Anchor Games is licensed as a manufacturer and distributor. Mr. Hirsch indicated that the revenue-sharing agreement is the method which Anchor Games uses in order to market its games. The machines are not available for purchase. Commissioner White again asked how the Commission can be assured this is a normal business transaction as they do not know the value of the equipment, the length of the lease and lease payment. Mr. Pavone informed Commissioner White that these games had been approved by the Commission several months ago, and Anchor Games has been licensed by the State as a manufacturer and distributor. He reiterated that Anchor Games leases their machines through a revenue-sharing agreement rather than a straight lease. Mr. Pavone informed Commissioner White that he had posed a question which he was unable to answer. Mr. Hirsch stated that the agreement contained a 30-day walk away clause for these machines.

Commissioner White asked how the Commission is to determine that this is a valid distribution of the profits, a valid contract. He requested that the contract with Anchor Games be pulled for the vote. Commissioner Peyton asked how many licensees currently have the machines in place. (By a show of hands, the majority of licensees indicated they do have these machines in operation at their facilities.)

Mr. Ketterer indicated this is a legal question and deferred to Mr. Farrell. He indicated the revenue -sharing agreement is the only way that Anchor Games offers these games to the casinos. Anchor Games uses the same process across the country. Mr. Ketterer indicated this contract should be deferred until next month in order to allow Mr. Farrell to review the agreement.

Commissioner Peyton asked Mr. Pavone when the machines were to be installed. Mr. Pavone indicated that the machines are already installed. The purchase, installation and acquisition of the

machines was approved by the Commission approximately five months ago. Mr. Hirsch indicated that this would not necessarily have to come before the Commission under the guidelines.

Commissioner White asked if the $170,000 was an annual fee. Mr. Pavone indicated that they refer to it as a fee, but it is really a revenue sharing percentage which BSC is estimating, and they feel the revenue will be more than $50,000. Commissioner White asked if the contract was for 12 months. Mr. Pavone indicated it was.

Commissioner Allen asked if the above games were replacements or additional units. Mr. Pavone stated they were replacements for 56 games which were removed.

Chair Sealock asked if it was still proper to defer action on this contract. Mr. Farrell stated that a legal issue has been raised, and feels it should be analyzed. He recommended that the contract for Anchor Games be deferred until the June meeting to provide him with an opportunity to determine whether the licensee is sharing revenue with someone who is not licensed as an operator, which would be improper under current law. All other licensees will have to comply with the Commission's decision.

Chair Sealock clarified that the contract with Anchor Games was being removed from consideration during the vote. She called for a motion regarding the other three contracts submitted by BSC. Commissioner Allen moved to approve the remaining contracts as submitted. Commissioner White seconded the motion which carried unanimously. (See Order No. 97-65)

Mr. Pavone advised the Commission that the Missouri River Historical Society awarded $1.5 million to local charities within the community, including $520,000 for special projects.

Following a short break, Chair Sealock called on Miss Marquette to present their contract. George Kissler, Director of Operations, presented a contract with John B. Baker for the purchase of land for Commission approval. Commissioner Allen asked how the land being purchased would be used. Mr. Kissler indicated the land is adjacent to their existing parking lot and they intend to use it for future development, more than likely for additional parking. The land is currently zoned for camping, and they are considering an RV park.

Hearing no further questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contract for Miss Marquette as submitted. Commissioner Allen seconded the motion which carried unanimously. (See Order No. 97-66)

Chair Sealock then called on Mr. Terp from Ameristar who presented the following contracts for Commission approval:

- Absolutely Fresh Seafood Co. - Fresh & Frozen Seafood
- Ameristar Casino Development - Commercial Lines Insurance Premiums to be combined with other Ameristar Casino Locations
- Council Bluffs Water Works - Water Monopoly
- Devan Direct Marketing, Inc. - Direct Mail Processing & Distribution, Postage
- Gemaco Playing Card Co. - Logo & Special Casino Playing Cards
- International Electronic Protection - Miscellaneous Surveillance Parts
- Monfort, Inc. - Beef & Beef By-Products
- Office Depot - Miscellaneous Office Supplies
- The Omni Centre, L.L.C. - Storage Rental
- ResourceNet International - Miscellaneous Styrofoam Products
- Stratton Warren Software, Inc. - Software License Agreement, Training Airfare Reimbursements
- J P Foodservice, Inc. - Miscellaneous Perishables & Groceries

Hearing no discussion regarding the contracts, Chair Sealock called for a motion. Commissioner Allen moved to approve the contracts for Ameristar as submitted. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-67)

Mr. Terp provided the Commission with an update regarding Project 21. He noted that Ameristar has spent $34,000 from July to the present, with a goal of $40,000 by July 1997. The three Council Bluff licensees sponsored a scholarship program through the local school districts, and awarded five $1,000 scholarships, five $500 scholarships, and ten $250 scholarships. Chair Sealock asked if the Omaha schools participated in the program. Mr. Terp indicated they declined the invitation to participate.

Chair Sealock called on Dubuque Diamond Jo (DDJ) to present their contracts. Doug Gross, legal counsel, advised the Commission that one of the key contracts before them was the Amendment to the Operating Agreement. He indicated that the Operating Agreement previously had not included a "savings clause" in the event any of the unit holders had difficulty with a regulator on licensing. There was no provision by which the company could force the unit holder to sell or buy back. The unit holders have adopted this concept. Additionally, there is another contract concerning the buy back of certain units that Don Iverson had purchased from John Schegan which IRGC required Mr. Schegan to sell. Mr. Iverson gave the company an option to buy back those units which they exercised. A contract concerning those units is included. Mr. Gross indicated that he had spoken with Jim Rix, General Manager of DDJ, regarding their in-state/out-of-state ratios, and Mr. Rix had advised him their in-state purchases exceed 65%.

Mr. Gross presented the following contracts for approval:

- Amendment to Operating Agreement to provide for Repurchase Interests in the Company
- Beichler Electric Company - Electrical Service, Repairs & Maintenance
- Donald C. Iverson - Membership Units
- Honkamp Krueger & Co., P.C. - Yearly and Quarterly Audit Reports, Accounting Software Services & Training
- Ken Moore Construction, Inc. - Remodeling of Restaurant in Portside Facility
- Mikohn Gaming - Progressive and Casino Signage Equipment
- Naylor, Hoover & Blair, P.C. - Legal Work regarding Labor & Employee Issues
- PerMar Security Services - Surveillance Equipment, Technical Equipment & Support

Chair Sealock asked if Arnie Honkamp was still on the Board. Mr. Gross advised Chair Sealock that he was not a unit holder.

Commissioner Allen commended DDJ for its diligence in making their contract requests more precise which eliminates the need for questions.

Hearing no further comments or questions, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contracts for DDJ as submitted. Commissioner Peyton seconded the motion which passed unanimously. (See Order No. 97-68)

Chair Sealock then called on Mark Lohman, General Manager of the President, who presented the following contracts for Commission approval:

- Competitive Distributors - Logo Merchandise for Promotions & Retail
- Metro Credit Corporation - Logo Merchandise for Promotions & Retail
- Quad City Mallards Hockey - Sponsorship & Television Promoting
- Thompson & Coburn - SEC Counsel for the General Partner

Commissioner Allen asked Mr. Lohman why the amount spent with Competitive Distributors jumped from $18,000 to an estimated $100,000 in 1997. Mr. Lohman indicated it is partially due to the consolidation of purchases. He indicated that The President did not start doing business with this particular company until late last year, and the $100,000 figure is for an entire year.

Hearing no further comments or questions, Chair Sealock called for a motion. Commissioner Allen moved to approve the contracts of The President as submitted. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-69)

Chair Sealock called on Ken Bonnet, President of the Mississippi Belle II (MB II) to present their contract with Gemaco Playing Card Company for playing cards.

Hearing no comments or questions regarding the contract, Chair Sealock called for a motion. Commissioner White moved to approve MB II's contract as submitted. Commissioner Peyton seconded the motion which carried unanimously. (See Order No. 97-70)

Mr. Bonnet informed the Commission that the MB II held their Make-A-Wish event in May, and raised over $9,000, up almost $1,000 from the previous year. This figure will grant two of the four wishes in Clinton County. A Make-A-Wish golf outing is scheduled for August which they hope will raise enough funds to grant one more wish.

Chair Sealock then called upon Prairie Meadows (PM) for their contracts. Bob Farinella, General Manager, presented the following contracts for Commission approval:

- Aristocrat Inc. - Slot Machines
- Bally Gaming, Inc. - Slot Machines
- Mikohn Gaming Corp. - Slot Machines
- City of Altoona - Stoplight
- Cool Walk, L.C. - Horse Walkers
- Krogman & Associates - Advertising
- Stew Hansen's Dodge City, Inc. - Four 1997 Dodge Dakota Trucks
- Sign Specialists - Casino Signage
- Central Iowa Ambulance Service, Inc. - Ambulance and Emergency Medical Services

Hearing no questions or comments concerning PM' contracts, Chair Sealock requested a motion. Commissioner Allen moved to approve the contracts as submitted. Commissioner Peyton seconded the motion. The motion carried on a 4-0 vote as Commissioner Hansen was not present. (See Order No. 97-71)

Chair Sealock called on Bruce Wentworth, General Manager of the Dubuque Greyhound Park & Casino (DGP&C), to present their contract with International Association of Machinists & Aerospace Workers AFL-CIO Local 1238 which is a labor agreement.

Hearing no questions or comments regarding the contract, Chair Sealock requested a motion. Commissioner Peyton moved to approve the contract as submitted by DGP&C. Commissioner White seconded the motion. The motion carried on a 4-0 vote as Commissioner Hansen was not present. (See Order No. 97-72)

Mr. Wentworth advised the Commission that DGP&C began their thirteenth live racing season on May 1, 1997. He introduced the new Director of Racing, Brian Carpenter.

Chair Sealock called on Bluffs Run Casino (BRC) to present their contracts for Commission approval. Barry Sevedge, Director of Operations for BRC, presented the following contracts:

- American Lift & Sign - 3-Year Sign Maintenance Agreement
- American Lift & Sign - Additional Signage
- Cummins-Allison - Jetsort (Coin Sorter Machine)
- D.E.B. Partnership - Lease of Real Property for Billboard
- Lanoha Nursery - Landscaping Project
- Edwin B. & Minnie E. Rasmussen - Lease of Real Property for Billboard
- Redland & Associates - Employee Safety Incentive Program
- Tad-Ray Corporation - Lease of Real Property for Billboard

Commissioner Peyton asked Mr. Sevedge when the parking lot would be completed. Mr. Sevedge indicated the parking lots are close to being done. He indicated the RV park is behind schedule as they are having to pump away water in order to put down gravel and asphalt. The parking lot should be completed within a week or so.

Hearing no further comments or questions regarding the contracts, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts for BRC as submitted. Commissioner Allen seconded the motion which carried unanimously. (See Order No. 97-73)

Chair Sealock moved to Catfish Bend Casinos' (CBC) request for additional gaming positions for the new boat. Dan Kehl, General Manager, and Gary Hoyer, legal counsel, came forward to address any questions the Commission might have. Mr. Hoyer indicated that CBC had submitted a request to add additional slot machines. He noted that ten machines had been placed in storage due to action taken at a previous meeting, and requested permission to bring those machines back onto the floor as well as add another 195 slot machines. They are also requesting permission to add one craps table and three black jack tables. The purpose of the expansion is to allow additional gaming for the weekend nights when they expect their crowds to be heavier due to the new vessel and added food service.

Commissioner Peyton asked if there were any financial projections available in terms of additional revenues. Mr. Kehl indicated the additional machines are expected to produce between $3 - $4 million in revenue. The original projections for the new vessel with the existing gaming positions was $24 million.

Mr. Kehl, on behalf of Jim Rheinschmidt, President of Southeast Iowa Regional Riverboat Corporation, thanked the Commission for allowing them to proceed with the purchase of the larger vessel.

Mr. Ketterer requested that Mr. Kehl explain CBC's position to Commissioner White regarding the application submitted by Keokuk last year, their request in the fall, how CBC feels the positions are consistent, and why they feel they should be granted the additional gaming positions at this time. Mr. Kehl stated that CBC opposed the Keokuk application based on the market area as they did not feel the southeast Iowa market was large enough to support two competing riverboat operations. They did agree there was some additional gaming market to be captured, but felt they would be able to serve the market through an expansion of their facilities. In October 1996, CBC came before the Commission to request permission to purchase a larger vessel which would allow them to offer more gaming opportunities, entertainment and dining facilities. At that point, the Commission denied the request for additional gaming positions. CBC requested a special telephonic meeting in which they requested authorization to acquire a larger boat but maintain the number of gaming positions. The request was granted. It was the Commission's position at that time that Keokuk would be able to reapply for a license in April and CBC could apply for the additional gaming positions at that time. CBC would like to have the gaming positions regardless of what happens in Keokuk.

Mr. Ketterer suggested that possibly Bill Grace, President of Midwest Gaming, should give the Commission an update on the status of the Keokuk application at the conclusion of CBC's presentation.

Commissioner Peyton asked if it would be CBC's position, once they have been granted the additional gaming positions, that those positions are all the market can support. He referred to Mr. Kehl's statement that there is additional market to be served, but questioned whether they would object to a competitor in the market area.

Mr. Hoyer stated that CBC has consistently stated that the market is insufficient to allow two operators to successfully compete. They submitted a market study which indicated the market was between $24 - $26.5 million. CBC has been has been achieving approximately $22 million in total gaming revenue, and feel they can improve that number by increasing their number of gaming positions and expanding their entertainment and dining facilities. Mr. Hoyer stated that CBC started very small, and has expanded three or four times since opening.

Commissioner Allen asked what would happen to the smaller vessel. Mr. Hoyer indicated it is their intent to sell the vessel, and negotiations are ongoing. The purchaser has had some difficulty with financing, but they expect to receive a new proposal by the end of the week.

Chair Sealock asked Mr. Grace if he wished to address the Commission. Mr. Grace indicated that he continued to be amazed by Mr. Hoyer's inconsistencies. He stated that the market study performed by Christiansen and Cummings for the State clearly stated that there was a market in southeast Iowa for another operator. The market study also indicated that the potential market in Illinois and Missouri was not being tapped. He stated that CBC's own numbers indicate that only

4% of their customer base was coming from south of Keokuk. Mr. Grace stated that his study showed a potential market of $40 million. He questioned why CBC has been trying to work out a joint venture in LaGrange, Missouri if the southeast Iowa market would not support two operators. Mr. Grace requested the Commission deny CBC's request until Midwest Gaming and Keokuk have an opportunity to come before the Commission.

Chair Sealock asked Mr. Grace when they might be coming before the Commission. Mr. Grace indicated they planned to file their application later this month.

Commissioner Peyton asked Mr. Grace if Midwest Gaming would feel there was too much saturation in the market if CBC's request for additional gaming positions was granted thereby preventing them from making a viable attempt to place a second operator in the market. Mr. Grace indicated it would not.

Chair Sealock asked if there were additional comments or questions. Commissioner Peyton stated that he was uncomfortable in delaying CBC's request indefinitely, but feels there is another application which will be presented very soon or not at all. He does not feel there is any harm on deferring action on this request for one month. He noted that it has always been the Commission's intent that the Keokuk application and CBC's request for additional gaming positions would be decided at the same time, and that it would be shortsighted to proceed with one and not the other now. He went on to state that he would like to see this issue, whether there are one or two requests, resolved at the June meeting.

Hearing no additional comments, Chair Sealock called for a motion. Commissioner Peyton moved to defer CBC's request for additional gaming positions for the new vessel until the June meeting. Commissioner Allen seconded the motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-74)

Chair Sealock then called on BRC and Iowa Greyhound Association (IGA) regarding the purse money which has been escrowed per the 1997 Arbitration decision. Mr. Sevedge indicated the two sides have held meetings but have not been able to agree on how the escrowed funds should be disbursed. According to the arbitration decision, the escrow funds will total approximately $6 million by the end of 1997, and can not continue to accumulate indefinitely without a specified plan for disposition. IGA and Iowa West Racing Association are required to propose a plan for the disposition of the funds on or before November 1, 1997. The plan is to be presented to IRGC for its approval or revision. The agreement also stated that if the two parties could not agree on a disbursement plan, IRGC would make the decision.

Another requirement made in the arbitration decision, which is related to the disposition of the escrow fund, reiterated the statutory duty of BRC, IGA and the arbitration panel to develop the

breeding and racing industry in Iowa. The panel expressed concerns regarding the progress of the greyhound industry, and noted that the parties' current plan to promote the industry was not effective.

Mr. Sevedge noted that in order to meet statutory requirements, BRC and IGA have negotiated singular issues annually. The goal of the process is to determine how much money will be spent on purses and Iowa Bred Purses for the following year, and that is what they have done this year. BRC feels that any issues regarding the development of the Iowa greyhound industry should be evaluated as part of an overall development plan with stated criteria. Mr. Sevedge presented the Commission with a proposed schedule which BRC feels addresses all of the issues concerning how to develop the greyhound industry in a logical order that will result in a plan and meet the requirements of IRGC for relicensing as well as the arbitration decision. He indicated the plan had been discussed with IGA.

Mr. Sevedge stated that it was BRC's suggestion that proposals should be submitted by both parties at the June meeting concerning the escrow fund. When the Commission announces the recipient of the Greyhound Promotion Fund at the July meeting, BRC would like the recipient to submit a proposal for developing the racing industry. BRC would submit their proposal in August during their renewal presentation, and enter into negotiation process with the end results of the negotiations or arbitration before the Commission in September.

Chair Sealock asked Jerry Crawford, legal counsel for IGA, if he wished to address the Commission. Mr. Crawford indicated this was the first time he had seen the proposed schedule, but would address it at the conclusion of his comments regarding the overall issue. Mr. Crawford informed the Commission that IGA is pleased with Mr. Carpenter's promotion to Racing Secretary at DGP&C.

Mr. Crawford advised the Commission that the escrow fund was funded for the first time with an initial principle deposit of $4 million. There was an additional deposit of approximately $625,000. The fund has earned approximately $75,000 to date. The IGA retained a consultant to develop Request for Proposals which could be sent to investment advisors throughout Iowa and the Midwest. The IGA received 18 written requests in response to the RFPs. The IGA Board reviewed the 18 proposals and selected four finalists to meet with the Board and present oral presentations. A second consultant with expertise in the area of investment management was hired to work with the IGA Board during this process. Two investment managers were selected, and each will manage one-half of the escrow fund. The investment firms selected were Dean Witter and Robert W. Baird. IGA and Eric Wilson, Director for Compliance for BRC, have held productive discussions pertaining to the use of the escrow fund. Mr. Crawford stated that the IGA agrees with the language in the arbitration decision which states there should be a plan for usage of the fund going forward, and that it should be used to develop the industry. He indicated that he feels this is already happening, and noted that the top racing greyhound at BRC last year could very well have been the top greyhound in the

country and was an Iowa Bred. He also stated that last December, a 50% interest in a single litter of greyhound pups brought $30,000.

The IGA's goal with regard to the use of the escrow account is to secure the future of greyhound racing at BRC indefinitely. The IGA would like to grow the fund as large as possible over the next decade in order to create a source of future earnings which could be used to supplement greyhound purses. The IGA membership's goal has been to sacrifice themselves in the short term in order to grow the escrow account for the long term in the event casino revenues decrease and are no longer available to supplement purses. This is the same reason they agreed to become an equal partner with AIM/IWRA in the simulcasting venture. It is IGA's belief that a few dominate greyhound racing facilities will survive, and their quality will be high enough that their simulcast signal will be in demand around the country. It is IGA's belief that growing the fund and preserving the opportunity to have high purses will put BRC in a position to be one of the survivors with all of the economic benefits. BRC's proposal would put more money in the pockets of IGA's membership for the short term; while IGA's goal is to secure the industry's future in greyhound racing at BRC. He noted that IGA's half of the simulcast expenses this year will be close to $200,000 which is a significant deficit and obligation out of the earnings of the escrow fund which is permitted under the arbitration decision.

Regarding Mr. Sevedge's proposed presentation schedule, Mr. Crawford did not feel that was an equitable way to proceed. There is no disagreement with the bottom line which calls for all disputes to be decided at the September Commission meeting. He feels proposals regarding usage of the escrow fund should be made by everyone at the same Commission meeting.

Mr. Ketterer asked if it would be possible for the presentations to be given at the July meeting. Mr. Crawford felt they could.

As there were no additional questions regarding the escrow issue, Chair Sealock called on Mr. Wilson to provide the Commission with an update on the simulcast program. Mr. Wilson stated that the live racing program has not suffered. The export revenues have fluctuated, and he is still attempting to locate additional locations to send their signal. He noted that the import revenues are also fluctuating. Mr. Wilson feels the money received on the import side is new money. He is pleased with the simulcasting program overall, but feels they can do better.

Mr. Sevedge took a moment to explain why BRC proposed that the recipient of the Greyhound Promotion Fund present their thoughts regarding usage of the escrow fund in July as they thought it tied in with their explanation as to why they should receive the greyhound promotion funds.

Mr. Sevedge stated that BRC and IGA are diametrically opposed regarding the disposition of the escrow fund. The IGA wants the fund to accumulate indefinitely to be available at some future time

to pay purses if gaming supplements decline. BRC does not agree with that scenario as there is no guarantee that the track will be around either due to the referendum in 2002 or because of legislative action. They also question why just BRC should be expected to support the greyhound industry in Iowa. BRC feels that if the fund is allowed to accumulate indefinitely, the final disposition of the fund is unknown. The breeders and trainers who made the sacrifices to grow the fund may not be around to collect the funds when they are disbursed. There is a possibility that it could be diverted for other uses even though that is the designated use. He does not see any way that BRC can reach a compromise on the use of the escrow funds unless the issue of how to support the industry with other money is covered. Mr. Sevedge feels it is important to have some type of orderly process for developing a plan.

Mr. Ketterer noted that the Commission will be considering racing license renewals at the September meeting which will require documentation to be submitted in August. He stated there was nothing to prevent BRC from getting their information regarding a plan and the escrow fund together sooner. He indicated that it sounded like BRC had some work to do regarding the proposed plan, disposition of the escrow fund, and their license renewal, and they should get started.

Chair Sealock called on Racing Association of Central Iowa/Prairie Meadows (RACI/PM) to present their season approval request for the 1997 Thoroughbred and Quarter Horse Racing Season and associated agreements and contracts. Mr. Farinella introduced Derron Heldt, Director of Live Racing. Mr. Heldt covered the various aspects of the upcoming meet which will begin on July 18 and run through September 30, 1997, with racing on Monday-Tuesday and Friday-Saturday. Post time for Monday, Friday and Saturday will be 7:00 PM, and Tuesday will be 3:00 PM. Simulcasting will remain almost the same as it is now. The security plan currently in place is working well and will continue to be used for the next meet. The performance bond is dated April 1, 1997 and runs through April 1, 1998.

Mr. Ketterer asked why PM chose to go with a 3:00 PM post time on Tuesday. Mr. Heldt stated that there is less simulcasting on Tuesdays and they are hoping to send their signal to New York. If they can get into that market, PM could see between $150, 000 and $200,000 per day. Mr. Ketterer asked if the horsemen had any problems with the earlier post time. Mr. Heldt indicated they did not. Mr. Farinella stated they have received numerous requests from customers to have some racing during the day.

As there were no further comments or questions regarding PM request, Chair Sealock called for a motion. Commissioner Peyton moved to approve PM's Request for Approval of the 1997 Thoroughbred and Quarter Horse Racing Season subject to the name of the steward being submitted for staff approval and the appropriate background checks completed. Commissioner Allen seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-75)

Chair Sealock moved to the progress report regarding an agreement on the use of the facility and relationship with Polk County after the debt on the facility has been paid. Mr. Ketterer advised the Commission that Liza Ovrum, Polk County Attorney, could not attend the meeting but had submitted a letter. Mr. Farinella stated that two members from the Board and corporate counsel met with the Chairman of the County Board of Supervisors and one other member and their legal counsel to begin the process of determining how to proceed since the debt to the County has been retired. The discussions challenged the County to return with their proposed ground rules regarding the financial arrangements they would consider acceptable for a long-term lease arrangement.

Mr. Ketterer summarized Ms. Ovrum's letter which covered the IRS regulation which was changed and would allow the County to sell PM and pay the IRS approximately $3.2 million for a closing amount. The appraisal of the facility is scheduled to be reviewed by the County on May 20, and the economic impact study should be completed by the end of May. They will also need to determine what effect, if any, the proceeds from a sale of PM would have on the County's annual budget and tax levy. She referred to the May 9 meeting between the parties, and indicated that both parties are interested in negotiating a lease. The County would like to finalize a lease agreement so that it could be on the agenda prior to the September 1997 meeting. The broad terms of the lease agreement would be that RACI would pay the County a set amount in exchange for the use of the facility.

Commissioner Peyton asked Mr. Farinella if there was a set date which RACI and Polk County have agreed on that all of the financial obligations were finally completed. Mr. Farinella stated that a final transfer to repay the $89 million was done at the end of November, 1996. He went on to note that with the transfers made thus far in 1997, Polk County has received approximately $18 million above and beyond the $89 million debt. The repayment by PM does not necessarily mean that Polk County has retired all of the financing bonds.

Chair Sealock then moved to the hearing for DGP&C regarding a violation of Iowa Code Section 99F.9 (Wagering - Age Restrictions). Mr. Ketterer advised the Commission that IRGC staff and management of DGP&C have entered into a Stipulation. An underage female won a $625 jackpot on March 22. Surveillance coverage shows the individual was not stopped and asked for ID upon entering the casino, but was only in the gambling area for a relatively short period of time prior to winning the jackpot. DGP&C slot personnel and security discovered the individual and notified IRGC and DCI staff immediately. The parties have agreed on a $15,000 penalty.

Mr. Wentworth stated that since the above incident, they have started checking the ID of anyone who appears to be under the age of 27. On the day the underage individual gained access to the casino, DGP&C did challenge 126 people entering the casino, but not the one involved in this incident. He noted that this is their second incident, but there were 273 days in between them. In that time, DGP&C staff had challenged 13,931 individuals. The individual was charged under the local underage gaming ordinance. The individual involved in this particular incident was from Wisconsin

where the legal gambling age is 18. Mr. Wentworth stated that DGP&C is aware of their responsibilities and will continue to do everything they can to prevent these kinds of incidents.

Hearing no additional comments or questions concerning the Stipulation, Chair Sealock called for a motion. Commissioner Peyton moved to approve the Stipulation. Commissioner White seconded the motion. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 97-76)

Chair Sealock moved to the proposed meeting dates for Fiscal Year 1998 under Administrative Business. Commissioner White requested that consideration be given to moving the meeting scheduled for the eastern side of the state to Friday. Chair Sealock noted that the individuals attending the meeting from that side of the state might have preferred that this meeting was moved to a Friday. Mr. Ketterer indicated that a decision regarding the October and April meeting dates could be deferred until the June meeting. It was decided to change the August meeting from the 21st to Friday, the 22nd. Commissioner White moved to approve the proposed fiscal year 1998 meeting dates as submitted with the exception of August 21 being changed to August 22, and that action regarding the October 1997 and April 1998 meeting dates be deferred. Commissioner Hansen seconded the motion which carried unanimously. (See Order No. 97-77)

Chair Sealock moved on to a report from Commissioners Hansen and Peyton regarding their visit to various horse and greyhound breeding farms. Commissioner Peyton reported they had visited a quarter horse breeding farm, a thoroughbred breeding farm and one greyhound breeding farm. It helped to add perspective to the purse supplements and what they are doing to benefit those industries in Iowa. The trip provided insight into recognizing the kind of investment made by those individuals in facilities, as well as the economic impact outside of the area in which the racing facility is located. Commissioner Peyton stated that it made him see the need for predictability in the regulation of the racing industry and what they can expect from the racing facility. He noted that both he and Commissioner Hansen felt there had been a substantial increase in the quality of the racing animals which he attributed to the industry in Iowa and the purse supplements. Commissioner Peyton noted there are 80 counties which have brood mares. Commissioner Hansen stated there are 1255 brood mares in Iowa.

Chair Sealock asked if there was any other administrative business. Commissioner Hansen returned to the Argosy matter in order to insure the broadest possible agenda title in order to avoid further technicality problems. He also asked what input a Commission member has on the formulation of the meeting agenda. He noted that he submitted a timely written request for four agenda items to be included in today's meeting and only one was acknowledged.

Chair Sealock indicated that she had a problem with Commissioner Hansen's comment that his request was timely. She stated that she received her letter the day the agenda was being put together.

She stated that all Commissioners have a responsibility to stay in close contact with staff as they want the agenda the way the Commission wants it and have items on it, but it is necessary for staff to understand what they are and what the plans are for that particular item.

Commissioner Hansen noted that his registered letter went out ten days in advance of the meeting, and was received nine days in advance of the meeting which would be 2 days prior to the preparation of the agenda. Chair Sealock stated that Commissioners have insisted that the agenda packets be received on Friday prior to the meeting the following Thursday.

Mr. Ketterer stated that he goes through the Chair, and was not sure whether his comments were being directed at him or not. The Chair makes the final decision regarding agenda items. Mr. Ketterer stated that he thought Commissioner Hansen and Chair Sealock had discussed the issues over the telephone and everything was resolved. Commissioner Hansen stated that he was advised by Chair Sealock that there was a disagreement on the appropriateness of the motion. He noted that in his previous dealings with commissions and boards, if a member asked for something to be placed on the agenda, the request was honored.

Chair Sealock stated that she advised Commissioner Hansen to contact Mr. Farrell regarding the motion as she was under the impression there was no pending motion. Commissioner Hansen stated that his request was for "any pending or potential parliamentary motions associated with Clarke County/Argosy application presented at the last Commission meeting." Chair Sealock advised Commissioner Hansen that Mr. Farrell had advised her that if one was in order it would be placed on the agenda.

Commissioner Peyton stated that anything that might require specific action, even if it is to reject that action, should be placed on the agenda. It became apparent today, that by failing to do so, the Commission is prohibited from dealing with that matter. He noted there is some discretion which is needed in preparing the agenda.

Mr. Ketterer indicated that staff has no interest in keeping items off the agenda. Chair Sealock noted that this has not occurred in the past.

Commissioner White asked if a preliminary agenda could go out early so the Commissioners can indicate whether or not there were additional agenda items. Linda Vanderloo, Director of Racing/Administration, noted that it is not uncommon that staff is still working with licensees to get agenda items in and copied on the day the agenda is to go out. Commissioner White pointed out that Commissioner Hansen would not be aware that his requested agenda items were not on the agenda until five days prior to the meeting, and then does not have the ability to amend the agenda at the meeting because of the Open Meetings Law. Commissioner White stated that he was under the impression there would be an action item regarding Clarke County/Argosy because he had spoken

with Commissioner Hansen who advised him of his intent. Commissioner White noted that in some cases when the Chair controls the agenda, two Commissioners can overrule the Chair and have something placed on the agenda. Chair Sealock stated that she did not have a problem with the item being on the agenda, but felt the issue had been resolved between Mr. Farrell and Commissioner Hansen. Commissioner White asked how often this had occurred previously. Chair Sealock stated that it had never happened before.

Commissioner Allen concurred with Commissioner White's request for a preliminary agenda. She stated that even the Friday deadline causes some problems for those Commission members who want to do research regarding agenda items, particularly if they have prior personal commitments. She would like to see a proposed or draft agenda.

Mr. Ketterer stated that it is possible to do a preliminary agenda, but there are times that our response time for agenda items is going to be longer, but would need everyone to be aware that the final copy may not be the same as the draft. The licensees would also need to get agenda items into staff earlier so that staff can process the material.

Commissioner Peyton stated that he is comfortable with the way the agenda is put together, and it is the Commissioner's and licensee's responsibility to make staff aware of proposed agenda items. The point being that Commissioner Hansen did make a request and a decision was made that the motion to reconsider was not proper. He suggested these items be placed on the agenda any way, and then counsel could indicate whether or not the item was appropriate at that time, but feels it would be better to put the item on the agenda and resolve the issue at the meeting.

Chair Sealock indicated that she would rather err and have something on the agenda which could then be removed rather than not respond. She stated that she contacted Commissioner Hansen within ten minutes of receiving his letter. It was not her intent to disregard his request. She felt that he and Mr. Farrell would discuss the Argosy issue and resolve the issue.

Commissioner Hansen stated that the Attorney General's (AG) representative is here to offer advice, not dictate policy. He does not feel the AG's office should come into play in determining whether or not an issue should be placed on the agenda. He concurs with Commissioner Peyton's comment that all issues should be placed on the agenda, and then the AG can indicate whether or not it is an appropriate item at the meeting.

Upon returning to the meeting, Mr. Farrell asked if he missed anything which he needed to respond to. Commissioner Hansen stated that he wanted to be sure that the agenda item regarding Clarke County and Argosy had the broadest possible title so there were no technical preclusions because it was not properly titled. Mr. Farrell indicated that he and Mr. Ketterer could work on the wording.

As there was no public comment, Chair Sealock called for motion to adjourn. Commissioner Peyton moved to adjourn the meeting. Commissioner Allen seconded the motion which carried unanimously.

MINUTES TAKEN BY:

Lynette Masker

LYNETTE MASKER

MINUTES TRANSCRIBED BY:

Julie Herrick CPS

JULIE HERRICK CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
JUNE 19, 1997

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, June 19, 1997 in the Auditorium of the Wallace State Office Building, Des Moines, Iowa. Commission members present were: Rita Sealock, Chair; Brad Peyton, Vice Chair; and members Bill Hansen, Jackie Allen and Harold White.

Chair Sealock called the meeting to order at 8:30 A.M., and called for a motion to approve the agenda. Commissioner Allen moved to approve the agenda as submitted. Commissioner Peyton seconded the motion which carried unanimously.

Chair Sealock requested a motion to go into Executive Session. Commissioner White moved to go into Executive Session pursuant to Iowa Code Section 21.5(1)a, for the purpose of reviewing documents which are required by law to be kept confidential. Commissioner Peyton seconded the motion which carried unanimously.

Following Executive Session, Chair Sealock introduced Commissioner White as the newest Commission member. She also noted that Commissioner Peyton was reappointed for a second term.

Chair Sealock requested a motion to approve the minutes from the May 15, 1997 Commission meeting. Commissioner White requested that two corrections be made to Page 7 as follows: "Commissioner White stated that, on <u>its</u> face, ..." and in Paragraph 4, 2nd line, "He requested that the contract with Anchor Games be pulled for <u>a separate</u> vote." Hearing no further corrections, Chair Sealock called for a motion. Commissioner Peyton moved to approve the minutes as corrected. Commissioner Allen seconded the motion which carried unanimously.

Chair Sealock called on Jack Ketterer, Administrator of IRGC, to discuss the Rules which were being presented for Notice of Intended Action. Mr. Ketterer took a moment to introduce Karlyn Dalsing from the Des Moines staff who is the new Executive Officer. Her duties include managing and administering all of the gaming boards and board of stewards and rulings which are appealed to the Administrative Law Judges.

In returning to the rules, Mr. Ketterer stated that he would cover the first nine items, and defer to Commissioner Peyton on the tenth item regarding the change in application criteria. He stated that most of the rules which were to be noticed were simply correcting typographical errors, punctuation or recognizing language changes. He advised that a few changes had been made to the prepared copy since they were sent with the agenda. The changes are as follows:

- Item 1 should read: "Cases not covered by these rules shall be governed by the current <u>edition</u> of Robert's Rules of Order, Newly Revised."

- Item 6, 7.7(2)(c): Delete the word "calendar."

- Item 8: Add a comma prior to "or current ..."

Mr. Ketterer noted that the raced reckless/interfered/ruled off procedures were suggested by the stewards, and were to clarify the stewards' and Commission's position regarding greyhounds who have raced reckless or interfered.

The last rule change relates to the Commission's application criteria which stated that the Commission would only accept applications for new riverboats in December. Commissioner Peyton stated that, under current circumstances, there is no reason to have the rule as it does not significantly reduce the administrative burden on the Commission or staff as far as considering applications. He feels it could place some hardships on licensees or applicants for licenses. Commissioner Peyton stated that he would like to see this provision rescinded.

Commissioner Allen stated that it would be in the best interest of the Commission and gaming industry to reverse the Commission's decision of last October. She agreed that the concept provided a uniform period of time to review riverboat license renewals each year; and went on to note that, for all practical purposes, current license holders do file their renewals in December. She does not feel the same time restrictions should be placed on any future group that may desire to file an application for a new facility. Commissioner Allen stated that the Commission should be willing to hear all requests in a reasonable and timely manner.

Chair Sealock called for any other comments regarding this particular rule change. Commissioner Hansen noted an additional reference to Robert's Rules in the rule book on Page 3 which should be worded in the same manner as the earlier rule regarding Robert's Rules. Mr. Ketterer felt that this could be added to the rule changes at this time.

Commissioner Hansen moved that the rule submissions as amended be approved. Chair Sealock asked Commissioner Hansen if his motion encompassed all of the rules. Chair Sealock indicated that she would like to have a separate vote on the rule change regarding application criteria if he was agreeable to the amendment to his motion. Commissioner Hansen indicated he was agreeable to the amendment. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-78)

Chair Sealock called for a motion regarding the change to Administrative Rule 491-20.10(5) - Application criteria. Commissioner Peyton moved to approve the Notice of Intended Action regarding the above rule. Commissioner Allen seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97- 79)

Chair Sealock moved to the Admission Fee Schedule for fiscal year 1998. As there was no discussion regarding the admission fee schedule, Chair Sealock called for a motion. Commissioner

Peyton moved to approve the schedule as submitted. Commissioner Allen seconded the motion which carried unanimously. (See Order No. 97-80)

Chair Sealock moved to Item 7 on the agenda, Consideration of any additional motions related to the Clarke County Development Corporation(CCDC)/Argosy of Iowa application decision at the April 8, 1997 Commission meeting. She noted that two members of the public had requested an opportunity to address the Commission regarding this issue, but called on Commissioner Hansen as he had requested this particular item be on the agenda.

Commissioner Hansen stated that after reviewing the Commission minutes for the previous two and one-half years, he found several instances where the final action taken by the Commission was reflective of its ultimate decision. He noted there have been motions to grant, and if they failed, there were subsequent motions to deny. There have been motions to deny which passed and were reflective of the final action; there have been motions to grant which passed and also were reflective of the final action. He was concerned that there was a motion to grant which did not pass, and there was no subsequent motion to deny as had been done in the past. Additionally, Commissioner Hansen stated that when the Commission denies or revokes a license it needs to be specifically stated as the language in the statute and rules pertaining to the possibility of the final redress of the applicant or licensee after a denial or revocation. He reiterated his intention to specifically extricate CCDC from any obligations they may have with Argosy as it was readily apparent that Argosy's application would not be approved by the Commission, and provide CCDC the opportunity to pursue another operator. Commissioner Hansen asked Jeff Farrell, Assistant Attorney General, if he had pursued the question as to whether or not it was possible to amend the application, or if the only option was for the Commission to deny Argosy's application with prejudice, and deny CCDC's application without prejudice.

Mr. Farrell stated that he agreed that motion to amend could be made to reflect that the denial to CCDC is without prejudice, and Argosy with prejudice under Robert's Rules of Order. He disagreed with Commissioner Hansen's comment regarding motions to grant which fail. He feels a motion to grant which fails on a three-two or greater vote amounts to a motion to deny. He went on to state there are times when the distinction could be important, and would argue that a motion that fails would amount to a denial of a license; however, he stated that he did agree that a motion to amend could be made to do what Commissioner Hansen wants to do. Mr. Farrell stated that a Motion to Amend was the correct procedure to follow in bringing the matter back before the Commission. Commissioner Hansen was agreeable.

Chair Sealock called on Chuck DeVos from Osceola to address the Commission; however he indicated that he would prefer to speak after the motion. Mr. Farrell stated that the motion should be made and seconded before any discussion takes place. Commissioner Hansen moved to amend the previous motion regarding the CCDC/Argosy application to deny Argosy's application with

prejudice and to deny CCDC's application without prejudice. Commissioner Allen seconded the motion.

Commissioner Peyton asked Mr. Farrell about the term "application". The rules are very specific in that the two applicants submit one application. Commissioners Hansen and Allen were agreeable with the amendment to the motion - substituting the word "applicant" for "application".

Commissioner White questioned whether or not it was proper to allow public comment regarding the previous motion. He also asked Commissioner Hansen if the reason he was specifically moving to deny Clarke County without prejudice was to allow them to come back before the Commission with another operator without waiting for one year. He clarified that the vote should not be taken as a sign that a license would be granted if and when an application is submitted. Commissioner Hansen stated that the purpose of this motion was to establish that the Commission has rejected the application of Argosy, and clearly set forth that the Commission will allow CCDC to resubmit an application as soon as possible with another operator or license applicant. He stated that the vote is not to be construed as supporting an application.

Chair Sealock advised Commissioner White that the Commission has allowed members of the public to address specific agenda items when they are being discussed by the Commission. Commissioner White reiterated that he did not feel it was appropriate for public discussion to interrupt their discussion prior to a vote being taken. Chair Sealock deferred to Mr. Farrell. Mr. Farrell stated that he felt it would be unwise for the Commission not to hear the public comments as that would be contrary to previous practice. If the public comment occurred after the vote was taken, it would not have much meaning. Mr. Farrell stated that he was not aware of a time that the Commission had failed to hear from someone who is interested in a specific agenda item. They may restrict the amount of time the individual may speak, but have always heard the public's comments. He suggested the Commission hear the public comment.

Commissioner Peyton indicated that he understood the impact of the motion, and would vote in favor of it, but was not convinced that the distinction between with prejudice and without prejudice to the non-profit applicant has any significance. He feels the rule could be interpreted in such a way that would allow a non-profit applicant to reapply by simply reorganizing and would not be bound by the previous non-profit's application. Commissioner Peyton felt the Commission was debating some legal issues that could easily be overcome by the formation of a new non-profit group. He did not agree that the non-profit was bound by the one year restriction; but reiterated that he agreed that this was an appropriate action.

Chair Sealock called on Chuck DeVos, Concerned Citizens Against Gambling of Osceola. Mr. DeVos noted that the motion essentially separated the non-profit from the operator which was contrary to his understanding of Iowa Administrative Rule 491-20.10(1) which states: "Qualified applicant. The term "applicant" as used in 491 - Chapters 20 and 21 shall refer to the qualified

nonprofit corporation and the boat operator if different than the qualified nonprofit corporation." He also read the last sentence in 491-20.10(1)(b) which states: "An application submitted by a qualified nonprofit corporation in conjunction with a boat operator shall be considered to be one application." Mr. DeVos noted that, throughout the rules, reference was made to an *application*, not an *applicant*. He noted that "applicant" and "qualified sponsoring organization" are defined under Iowa Code Section 99F.1, but an application is not defined except under 491-20.10(1). Mr. DeVos also referred to 491-20.14(1)(g) which states: "Application after denial or revocation. Any application for an excursion gambling boat license which has been denied or revoked is not eligible to apply again for licensing until after expiration of one year from the date of such denial or revocation, unless the commission advises that the denial is without prejudice." He noted that the rule refers to an application, not an applicant. He requested clarification or line of distinction as the new ruling appears to separate the applicants from the application, and wondered at what point in time the applicants and application would again be considered one. He feels the Commission would be setting a precedent.

Commissioner Peyton stated, in his opinion, that Mr. DeVos had hit upon the real issue. He asked Mr. DeVos what his opinion would be if the group reorganized as a new non-profit. Mr. DeVos stated that the rules are very clear that any non-profit can apply with an operator; but that is not what would occur in the case of Osceola. He is not aware that the non-profit group has reorganized. Commissioner Peyton pointed out that the Commission has not received an application. Commissioner Peyton stated that he understood what Mr. DeVos was saying, but felt there was a way for the application to be denied within the purview of the rules without getting into the with/without prejudice issue. It is Mr. DeVos' opinion that if the Commission proceeds with the motion they will be redefining what an "application" is under the rules.

Mr. Farrell voiced concern over Commissioner Peyton's comment that a non-profit organization could reorganize with a new name with the identity of the non-profit remaining the same. He noted that the Commission had dealt with a similar issue previously with Argosy in Sioux City where they were attempting to buy all of the assets of another company. The identity of the new company was different, and the Commission required them to file a new application. Mr. Farrell stated that he did not feel the Commission would want to permit a new non-profit to have the same cast of characters and then allow them to file an application, defeating the purpose of the one year rule if the previous application had been denied with prejudice.

Commissioner Peyton asked who the same cast of characters was. Mr. Farrell stated that determining the identity of a non-profit group may be more difficult than for a for-profit company, but indicated that he did not feel the Commission should publicly state or decide that they would not look at that issue. Commissioner Peyton stated that he was not attempting to predetermine whether or not the non-profit would be the same or different, but was stating that any group could form a non-profit and would be able to apply. Each case would have to be evaluated on its own merit. An

entirely new non-profit group and entirely new operator would be able to file an application at any time.

Otto Steele from Pella presented his feelings to the Commission regarding the Osceola issue. He noted that the Commission had voted to deny a license to CCDC and Argosy of Iowa in April, 1997, and under current rules, the decision should stand for one year. He feels CCDC has pressured IRGC into considering an application from the William Grace Company from Missouri. He noted this is a new operator, but the non-profit remains the same, and therefore; should not have the opportunity to resubmit an application until April 1998. Mr. Steele stated his belief that CCDC is using excessive influence beyond what is appropriate and needed. He stated that CCDC representatives have asked IRGC legal counsel to skirt the law which puts IRGC on the spot as it is a regulatory agency, not a promotional group. He feels a dangerous legal precedent will be set if the above action is adopted. Mr. Steele stated that, in his opinion, there is enough gambling in Iowa, and that most legislators and Iowans agree with him.

Chair Sealock advised Mr. Steele that the Commission would be changing one of its own rules, not a law.

Chair Sealock called for any other comments. Mr. Farrell stated that if this issue had been raised in April, the Commission could have denied the application as to one or both parties without prejudice at that time. The Commission is asking to amend the motion to do what they had the authority to do at the time of the original vote. He noted that the one year is the general rule, but the Commission can recognize exceptions in appropriate cases. Mr. Farrell does not feel the Commission would be setting a dangerous precedent as the issue could come up anytime the Commission denies an application. The purpose of the rule is to prevent applicants who are denied coming before the Commission with a new application month after month.

Commissioner White stated that he agreed with Commissioner Peyton's earlier comments. He noted the Code discusses two types of licenses: one to operate the excursion boat and the other is to operate the games on the excursion boat. He pointed out that the statute indicates that the nonprofit group has the authority to operate the games and the developer has the right to operate the riverboat. He reiterated that this action should not be taken as indication that a license would be granted as the Commission does not know what the application will look like, or what the benefits will be to Clarke County or Osceola. The Commission has not received an application; therefore, it has not had an opportunity to review the various agreements between all of the participating parties. He stated that he is not sure Commissioner Hansen's motion is necessary, but would negate any future dispute in interpreting the rules. Commissioner White stated that he hoped CCDC can come up with an application that will be beneficial to the residents of Clarke County, and not just the operator of the vessel.

Hearing no further comments, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-81)

Chair Sealock moved on to the discussion of various audit reports. The first audit to be discussed was for the Belle of Sioux City (BSC). John Pavone, General Manager, came forward to answer any questions. Commissioner Hansen stated that the 1996 audit showed a loss of $883,000 versus a profit in 1995 of $2 million, and asked Mr. Pavone if he had any comments. Mr. Pavone advised Commissioner Hansen that the BSC had to undergo its six year hull inspection and incurred costs of approximately $450,000. They experienced a drop in revenue of around $400,000 as the BSC was replaced with a smaller vessel during the hull inspection. In addition, BSC reduced the hold percentage on its slot machines by four points in order to compete with the Council Bluffs facilities. This action reduced revenue by $1.5 million. Additionally, the BSC was forced to shut down for two days (Friday/Saturday) due to high water on the Missouri River which affected revenue by $100,000 - $150,000. While the BSC was in dry dock, they staffed both vessels with security, and had to transfer the equipment between vessels. The vessel which replaced the BSC required major renovations and cleaning prior to being put into service. A parking lot expansion cost $220,000, and they increased their marketing expense by $225,000 in order to target the Sioux Falls, South Dakota market. In reviewing figures in the audit, Mr. Pavone noted that insurance costs were extremely high, and noted they are being rebid this year. One of the basic issues affecting the bottom line is the taxes. Mr. Pavone stated that BSC paid almost 30% in taxes and fees to the state, county, city, DCI, etc. They are paying the highest fees in the State of Iowa, with the smallest boat in Iowa.

Mr. Pavone noted that while the BSC was in dry dock, it was completely renovated and the layout of the boat was changed. He noted that for the first six months of this year they are on a record pace, and have broken all of the records from the first two years they were in operation.

Chair Sealock asked Mr. Pavone if BSC was tracking the response from their marketing efforts in South Dakota. Mr. Pavone indicated they were. They have been targeting areas within a 90 mile radius of their facility. He indicated their total revenues are up dramatically from last year. BSC has only experienced about a 3% reduction in patronage due to the Council Bluffs casinos. He feels the facility is headed in the right direction.

Commissioner Peyton asked Mr. Pavone if he was projecting a profit for 1997. Mr. Pavone indicated he was. He noted that insurance carriers are charging the riverboats the highest amount allowed even though there have been no claims as it is a new industry.

Chair Sealock then called on Jim Rix, General Manager of the Dubuque Diamond Jo (DDJ). Commissioner Hansen indicated that he had noticed a decline from $4 million net to $760,000, or a decline of 81%, and wondered if part of that was attributable to the sale of the "Little Diamond Jo". Mr. Rix indicated that it did. He noted revenues were actually up 35%, and their EBITDA jumped up 84.62%.

Hearing no further questions for Mr. Rix, Chair Sealock called on Jeff Terp, Vice President of Business Development for Ameristar. Commissioner Allen asked Mr. Terp what the underlying reason was for seeking a new line of credit. Mr. Terp indicated it was related to the acquisition of GEM Gaming and development of The Reserve in Nevada.

Commissioner Hansen stated that on the Profit and Loss Statement, under Other Income, Ameristar shows $8 million in related party interest expenses, and wondered if the figure represented lending documents held by management, various stockholders, or what. Mr. Terp stated Mr. Nielsen, President of Ameristar, and other officers do not have any contracts with the company other than as they may relate to some issues with the Jackpot facility. He noted there is a courier service in Twin Falls which is owned by Mr. Nielsen which subcontracts this service on a competitive bid process. The employee transportation from Twin Falls to Jackpot is provided through a second subsidiary corporation on a competitive bid basis.

Commissioner Hansen indicated the report showed a net profit of just over $1 million, but then several management and other income expenses are shown with a payout of over $12 million which he interpreted as the parent company putting a strain on Ameristar Council Bluffs. Mr. Terp asked Commissioner Hansen if he was asking if the management and income expenses were between Ameristar ACI Corporate and Ameristar Casino Council Bluffs, Inc. Commissioner Hansen showed Mr. Terp what he was referring to in the audit. Mr. Terp explained that any time Ameristar can advance pay on a debt, and have the money to do so, they do so. Ameristar does not have a management agreement between properties. The expenses shown in the audit are for debt retirement for expenses that corporate Ameristar and/or another property paid for pre-opening expenses in Council Bluffs, and which have been repaid with revenues from Council Bluffs.

Chair Sealock called on Mark Lohman, General Manager of The President. Mr. Lohman introduced James Zweufek, Chief Financial Officer for President Casinos, Inc. Commissioner Hansen stated that the audit showed a net income that is 44% of what it was two years ago, and that there has been an increase in expenses. He asked if there were signs that the downward trend had stopped and revenues were moving in a positive direction.

Mr. Lohman stated that in FY '95 the limits were removed, and The President did not have any competition in the Quad Cities area until the following year when Lady Luck Bettendorf started operations. Some of the decline can be attributed to the leveling out of the market between the two facilities. The President went from a 100% share of the market to approximately 50% even with some growth in the market.

Commissioner Hansen asked Mr. Lohman if it was safe to assume that revenues were starting to level off rather than continuing to decline. Mr. Lohman stated that revenue levels have stabilized, but pointed out that they were forced to shut down for two weeks due to flooding on the Mississippi River.

Chair Sealock asked if one of the contributing factors could also have been the fact that The President was required to have its 5 year hull inspection in 1996. Mr. Lohman concurred, noting that during that five month time frame, the vessel was replaced with a smaller vessel (about 2/3 the size of the regular vessel) which was not quite as well-received by the public.

Chair Sealock asked if five months was the average time for a hull inspection. Mr. Lohman indicated the vessel was sent to New Orleans in November, and the river does not reopen until March. President Casinos chose to use the time to do some refurbishment of the vessel. He noted the dry dock inspection took approximately three weeks.

Chair Sealock called on James Starr, General Manager of Miss Marquette, regarding their audit. Commissioner Hansen indicated the audit showed a deficit of $706,000, and was not able to find a separate comparison, and wondered how the current year was progressing. Mr. Starr indicated the loss was strictly a paper loss. The riverboat changed ownership on July 1, 1996, and Sodak Gaming acquired 100% of the assets. The transactions which caused the loss were charges for loans made to the property by Sodak Gaming. Sodak Gaming owns the vessel and always has. Mr. Starr noted that Miss Marquette had a tax credit of $380,000 which would have increased the loss of $1,087,000. During the last half of 1996, $914,000 in interest was paid to Sodak Gaming as well as $840,000 in boat rent, or total payments of $1,754,000 to Sodak. Sodak showed this as a profit while Miss Marquette did not. If you deduct $1,087,000 from $1,754,000, you get a profit of $667,000 for the last six months of 1996. Their EBITDA figure for the last six month would have $2,046,000 without those charges to Sodak.

Commissioner Peyton asked how the deficits were being funded - is the parent putting equity back into the subsidiary. Mr. Starr indicated that was the case. The loans on which they are paying interest on were made to the original developer of the property. Sodak also provided the funding to have the vessel constructed and leased it to the Miss Marquette property. The boat is still being leased from Sodak Gaming; however, discussions are currently being held about the possibility of purchasing the vessel but no conclusions have been reached. Interest and boat rent expenses continue to be incurred at this time.

Commissioner Peyton asked if Mr. Starr had any idea what the net equity of the property was. Mr. Starr indicated that Sodak Gaming has invested approximately $43 million into the property. The Miss Marquette is operated as a wholly owned subsidiary of Sodak Gaming.

Commissioner Peyton is concerned that the subsidiary could wither on the vine because the parent company is pulling out lease payments. Mr. Starr stated that it is Sodak's intent that the Miss Marquette continue to operate and be successful, and will do whatever is necessary to that end.

Mr. Starr distributed a report to the Commission which provided the economic impact of the riverboat on the City of Marquette and Clayton County since beginning operations. Current

employment is 623 people of which 517 are full time and 106 are part-time employees. The average wage is $9.20 per hour. Marquette only as a population of 479, but 60% of their employees are Iowans. He noted that the property tax rate in Marquette in 1994 was $14.23 per $1,000, and in July 1997, the rate will decrease to $4.20 per $1,000. In early July, Miss Marquette will be distributing $31,000 to various groups around Clayton County. Mr. Starr provided the following breakdown regarding where their revenue comes from: Iowa - 44%, Wisconsin - 44%; Minnesota - 8%; Illinois - 2%; and other states - 2%.

Chair Sealock called on Prairie Meadows Racetrack & Casino (PMR & C) to address questions regarding their audit. Mo Hyder, Director of Accounting for Racing Association of Iowa (RACI) was present to address any questions. Commissioner Hansen noted that income was up almost 28%, but that expenses are up almost 48%, and the bottom lines shows a significant decline from $6 million to $1 million. He also stated that he was not aware of all of the accounting machinations between RACI and Polk County.

Mr. Hyder stated that operating revenue increased by 5.9% from 1995 to 1996. Operating costs and expenses were up 28%, but operating income increased by 11%. PMR & C had operating income of $52 million in 1995, approximately $46 million was sent to Polk County, leaving a balance of approximately $6.5 million which represent undistributed earnings as a result of establishing future purse accounts in the amount of $4 million and additional escrow accounts. In 1996, the operating income was $58 million, $57 million was forwarded to the County, leaving a balance of $1 million. Mr. Hyder stated that PMR & C's deficit at the beginning of 1995 was $176,000 with retainage of $6.5 million. Payments were not based on bottom line accounting, but strictly on cash flow.

Commissioner Hansen asked if the big increase from $46 million to $57 million was related to the repayment of the debt. Mr. Hyder stated $46 million figure was lower as PMR & C had to establish escrow accounts for future purses which amounted to about $6 million. He reiterated that the bottom line had an increase of $11 million from 1995 to 1996.

Commissioner White noted that the notes to the financial statement indicate that RACI is exempt from federal income taxes under Section 501(c)(4) of the Internal Revenue Code, and that RACI had notified the IRS that a change in operations had occurred in 1995 with the addition of casino gaming. The notes further indicate that it is the opinion of Polk County and management of the Company, after consultation with counsel, that profits from casino operations are exempt from tax. Commissioner White stated that he had also reviewed Iowa West Racing Association's audit which also indicated that it was organized under Revenue Code 501(c)(4), and that IWRA's operations changed significantly in March 1995 as it expanded into casino activities. The audit further states that net operating activity from pari-mutuel and casino activities operated pursuant to Iowa statutes are now considered earned income. As a result, the Internal Revenue Service (IRS) has determined that, effective January 1, 1995, IWRA is subject to federal and state income taxes. Commissioner

White asked if PMR & C had a revenue ruling supporting their contention that the profits are tax exempt.

Mr. Hyder indicated that a ruling has been requested, and have recently received a request from the IRS for additional information regarding the total operations.

Commissioner White asked Mr. Hyder in what way PMR & C's operations and structure were different than IWRA. Mr. Hyder indicated that he did not know. Bob Farinella, General Manager for PMR & C, indicated there is a small difference between the two facilities in that PMR & C is totally operated as a not-for-profit corporation and does not have a for-profit operator which could possibly result in some financial ramifications. Mr. Farinella stated that legal counsel has viewed all of the transmissions of income to Polk County as charitable. Commissioner White expressed some concern that the IRS could issue a ruling that PMR & C/RACI could be held accountable for back taxes. He requested that Mr. Farinella keep the Commission advised of the status of the IRS ruling.

Commissioner White also referred to the fourth paragraph of the Notes to the audit which states in part: "The Company paid the remaining balance of the $89,300,000 to Polk County in December of 1996." He asked if there was any outstanding debt owed to Polk County by RACI. Mr. Farinella indicated there was not, but the Operating Agreement requires the transfer of funds. Commissioner White asked if PMR & C had received some type of release from Polk County which indicated that the bond had been paid in full. Mr. Farinella indicated that a strict accounting of funds transferred to Polk County had been established, and they provided monthly financial statements which indicate that the debt has been repaid. Commissioner White reiterated his question. Mr. Farinella stated that the original debt was Polk County's debt, there never was an $89.4 million debt on the books for RACI.

Commissioner White noted the audit shows equipment at $435,000 and equipment held under capital leases at $240,000. He asked if the slot machines were included in their fixed assets. Mr. Farinella stated they were not; that the gaming equipment was used as a security instrument for the bonds issued by Polk County. When the bond debt is released, the transfer of the gaming equipment to RACI will be made.

Commissioner White asked if Polk County had the funds on hand to pay off the bonds. Mr. Farinella stated that he is not an accountant for Polk County, and reiterated that RACI's total obligation to the County was $89.3 million and they have transferred that sum to Polk County. Commissioner White asked if RACI has issued a demand to Polk County to transfer the slot machines to RACI. Mr. Farinella stated that such a demand has not been made at this time as the release of the gaming equipment is tied into the repayment of the bonds. Even though the debt has been defeased, in his opinion, Mr. Farinella noted that the actual debt from Polk County on the bonds has not been released by bond counsel. Commissioner White again asked if RACI had made a

demand on Polk County to release any liens and transfer ownership of the slot machines to Polk County. Mr. Farinella indicated they had not.

Commissioner White noted that in his review of minutes, a concession was made for Polk County in 1994 to allow them to own slot machines without a gambling license. He noted the Commission was cognizant of a problem regarding the slot machines in November 1994, and that the motion to approve the Operating Agreement between Polk County and RACI was conditioned upon the transfer of the slot machines to RACI without additional consideration. He asked if Polk County is intentionally failing to pay off the bonds in order to retain ownership of the slot machines; if RACI has paid the debt why doesn't Polk County transfer the slot machines back to RACI who has the license to operate the machines.

Liza Ovrum, legal counsel for Polk County, advised Commissioner White that the bonds are not callable until 1998. Polk County has set aside the money to defease both the 1993 and 1995 bonds which are not callable at this time. Regarding the 1995 bonds, Polk County has been advised by bond counsel that they can not transfer ownership of the machines as long as the bonds are outstanding. Polk County has been advised that setting aside the money to pay the bonds is not the same as actually paying off the bonds.

Commissioner White noted that Polk County and RACI entered into an Operating Agreement in 1994 that took the profits away from RACI; however as he understands the law, the profits from the operation of the casino belong to the nonprofit organization who holds the gaming license. He noted that accommodations were made for Polk County to insure they were repaid; the debt has been paid and RACI should have control of their profits and gaming equipment. Commissioner White stated that Polk County should take whatever steps are necessary to satisfy the bond holders in order to be able to transfer the machines to RACI. Polk County's right to receive all of the profits from the casino is no longer viable, and that RACI, as a the nonprofit license holder, should have the ability to determine who receives charitable contributions. Commissioner White also expressed concern that Polk County is extracting taxes from RACI which they are not entitled to. He stated it is time for Polk County and RACI to follow the statute and rules. He stated that he has read the minutes and the Operating Agreement, and noted that this issue had been an agenda item for quite some time. It is his understanding that Polk County owns the facility and is only entitled to the rental value of the facility. If it is otherwise, then he feels Polk County is either taxing RACI or taking all of the profits. He also feels the Operating Agreement transfers the control of RACI to Polk County away from the Commission as well as intruding on the Commission's authority by way of its right to approve various aspects of the operations at PMR & C. In his opinion, the Commission gave up some of its authority over RACI to Polk County in the Operating Agreement. RACI is the licensee, not Polk County. Commissioner White felt it was necessary to get these issues on the table now rather than waiting until September when RACI's license is up for renewal.

Mr. Ketterer stated that he agreed with most of Commissioner White's statements, but did not agree with the comment that Polk County has usurped some of the Commission's authority. He noted that Polk County has the right to protect their facility and approve certain issues such as purses and management but that the Commission still has the final say on those issues.

Commissioner White noted that under Iowa law, purses are to be determined between RACI and the horsemen's organizations, not Polk County. He noted that Polk County also has the authority to approve the employment terms for the manager and the operating budget. He feels these are issues that Polk County and RACI need to address. Commissioner White asked what action the Commission will take if RACI is not in control of the license at the time of renewal. Chair Sealock stated that she had a pretty good idea.

Commissioner White noted that the appraisal of $160 million for PM is based upon the capitalization of RACI's income, not the value of the facility. The appraisal appraises the facility which is owned by Polk County based on RACI's income.

Ms. Ovrum again stated that Polk County has been advised by bond counsel that title to the slot machines can not be transferred to RACI until payment has been made to the bond holders.

Commissioner Peyton commented that the Operating Agreement requires Polk County and RACI to develop a plan to transfer ownership of the machines, and wondered if such a plan was in place. Ms. Ovrum indicated there was not. Commissioner Peyton stated that he concurred with Commissioner White's comments, but also that the Commission is aware that certain concessions were made to accommodate bond holders so they could be reassured the debt would be repaid. Ms. Ovrum stated that Polk County has done everything they can do until the bonds are paid.

Commissioner White stated that RACI should not forward any more funds to Polk County. Ms. Ovrum asked why. Commissioner White stated that Polk County is not entitled to the profits. Ms. Ovrum stated Polk County has an operating agreement which states that cash flow goes to the County, and RACI would be in violation of that agreement by not transferring the funds. She pointed out that the Operating Agreement was approved by the Commission prior to his appointment. The agreement also provides that after Polk County was repaid, RACI would retain a $1 million management fee. Commissioner White stated that if Polk County insists on maintaining the Operating Agreement without any modifications, it will place RACI's gaming license in jeopardy.

Ms. Ovrum advised Commissioner White that Polk County is interested in working out a lease arrangement with RACI. She admitted that little progress has been made in this area recently as they are waiting for some information. Ms. Ovrum stated that Polk County and RACI have been told by the Commission to have everything in order by the time of the license renewal. The Board of

Supervisors has indicated their willingness to negotiate a lease-type agreement. She is aware that the time to accomplish this is getting short, but feels that a lease is the goal of all parties involved.

Commissioner White requested that Ms. Ovrum obtain a statement from their bond advisor regarding the slot machines, and wondered how much money Polk County would have to deposit with the bond trustee to do that. Ms. Ovrum stated that the funds have already been deposited with the bond counsel. Commissioner White stated there is a possibility that he may put a motion before the Commission which would order Polk County to transfer the slot machines to RACI. Ms. Ovrum asked if he would pursue this avenue even if it would affect the tax-exempt status of the bonds which Polk County has issued. Commissioner White noted that the bond holder is holding sufficient money to retire the bonds, and does not know why Polk County can not transfer the gaming devices back to RACI.

Commissioner Peyton asked if RACI has even attempted to put together a plan where the slots would be transferred assuming that it is impossible to transfer the machines until the bonds are paid in full; why can't there be a plan in place to transfer the machines, without further consideration, when the bonds are paid. Ms. Ovrum indicated she thought this was a question for bond counsel as well. Commissioner Peyton indicated it was a question for RACI.

Mr. Farinella stated RACI has worked very closely with the County, and they have not pursued the issue because of the ruling by the bond counsel that the machines could not be released until the bonds have been paid. RACI feels the transfer is relatively straight forward once the bonds are retired. The current audit clearly states the machines will be transferred to RACI; but previous audits have indicated ownership was in dispute.

Commissioner White asked why the machines could not be transferred to RACI subject to a lien. Ms. Ovrum stated that she could not recall the rationale behind the bond counsel's ruling.

Commissioner Peyton stated that he has always been troubled by the talk about RACI repaying the debt and then talking about them entering into a lease arrangement with Polk County. He wonders if RACI is purchasing the facility or leasing it. If RACI has purchased the facility, why do they have to enter into a lease arrangement? He questioned how many times RACI had to pay for the facility before it is paid for. Ms. Ovrum stated that she felt the Operating Agreement was akin to a lease even though it contains more elements of control for the landlord than the Commission likes.

Commissioner Peyton stated that funds paid to Polk County over the 18 months it took RACI to repay the debt more than likely exceeded a reasonable lease payment. He stated that the Operating Agreement needs to be viewed in the context in which it was negotiated and approved, and that was to insure that the bond holders were repaid. He does not feel the Commission ever intended the County to be in the gaming business or to participate in the profitability of RACI. He noted the Operating Agreement does contain some provisions which allows the County to siphon those profits

until the debt has been repaid. Ms. Ovrum stated that she did not agree with that interpretation. She referred to a lengthy presentation made to the Commission one year ago , and also noted that Tom Flynn, legal counsel for RACI, indicated that was not the parties' interpretation. After the $89 million has been repaid, RACI gets a $1 million management fee and the cash flow continues to go to the County. Commissioner Peyton stated that he did not care what the parties intended, but is concerned how it complies with Iowa law. He is not sure whether the parties intended to convert RACI's profitability to the County, but indicated that was not a relevant issue. If it was the intention of both parties to siphon the profits from RACI to Polk County, then they are violating the law. Ms. Ovrum reiterated that the parties will be discussing a lease arrangement over the summer months.

Commissioner White noted that when the Legislature added racetrack enclosures, they adopted the provisions of Iowa Code Section 99F.6(4) states in part: "A qualified sponsoring organization, (RACI), is licensed to operate gambling games under this chapter shall distribute the receipts of all gambling games, less reasonable expenses, charges, taxes, fees, and deductions allowed under this chapter, as winnings to players or participants or shall distribute the receipts for educational, civic, public, charitable, patriotic, or religious uses ...". It is obvious that RACI is to have control of the distribution of slot profits. Ms. Ovrum stated that the County fits the requirements to receive funds. Commissioner White did not dispute that issue, but stated that his point is that it is to be RACI's decision as to who receives the funds, not Polk County. Ms. Ovrum indicated that RACI made that decision when they entered into the Operating Agreement, and reiterated that they would be working on a lease agreement. Commissioner White indicated that it should be a straight forward lease based on the rental value of the facility, not shared profits. Ms. Ovrum stated that RACI had requested that the lease be a share of profits so they are not locked into a specific amount. Commissioner White stated that if that is to be the case, then RACI should be prepared to justify the amount.

Commissioner Peyton indicated another problem he has had with the whole process is that it is in the County's best interests to drag their feet because as long as there is no lease agreement, they continue to receive all of the profits. Commissioner Peyton asked if the money already transferred to Polk County would be taken into consideration in determining a lease payment, deducting the yearly lease payment from the funds Polk County has received since the bonds were fully repaid. Ms. Ovrum indicated the lease period being discussed begins on January 1, 1998 and runs through 2002 as that is when the law requires another referendum to be held to determine whether or not gaming will continue in Polk County.

Ms. Ovrum asked if anyone had any questions concerning the sale issue. Commissioner White asked what was being sold. Ms. Ovrum indicated that the Commission has asked whether or not the County is interested in selling the track. She indicated that since last month's meeting the appraisal has come in at $160 million. Commissioner White asked if there was an appraisal of the hard assets. Ms. Ovrum indicated this was the only appraisal, and went on to note that the only copy received so far is a draft. Commissioner White noted that the Commission would need to see some type of

appraisal from someone who is knowledgeable in commercial leasing who would be able to determine whether the business enhances the value of the facility.

Commissioner Peyton stated that he found the appraisal the Commission had received to be very inadequate. He noted that a typical appraisal has three different methods, and noted that this appraisal purports to do that but he can't find any reports on the cost and replacement methods. The appraisal only reports the income valuation which includes RACI's income, possibly because it projects a higher value for the facility. He stated RACI's income is irrelevant when determining the value of the facility. He noted that for purposes of negotiating a lease, it might be helpful for RACI to know what their future revenues could be, but has no impact on the value of the real estate, the facilities on the real estate, and the replacement or construction of the facility. Commissioner Peyton stated that he would like to see an appraisal which would determine the value of the hard assets.

Mr. Farinella stated that when RACI learned Polk County was going to fund an appraisal of the property values, RACI's Board did discuss getting a second opinion but decided against it, that the additional expenditure by RACI could not be justified. When the initial appraisal was released to the public, the figures indicated the facility was valued at $65 million and that the potential earnings were valued at $103 million for a total of $168 million. When the final report was issued, the figures were $160 million. RACI now feels there is a need to have an assessment on the value of the assets. Ms. Ovrum noted that the Legislature had made the facility subject to property taxes so she feels a valuation of the property will be done. She noted that the facility was carried on the County's books based on the cost, approximately $40 million plus remodeling expenditures. Commissioner White suggested that RACI obtain their own appraisal.

Commissioner Peyton asked Ms. Ovrum if Steve Rimbro from Urban Systems, Inc. had performed all three types of appraisals. Ms. Ovrum noted there were two different appraisals. The Urban Systems, Inc. report has been received in its final format, but the other one has not. Commissioner Peyton stated that Mr. Rimbro indicates they performed a cost approach, comparable sales, and income capitalization, but the report only contains the results of the income capitalization report. He feels they probably completed all three, but Ms. Ovrum was not sure if they did all three or just chose which method they were going to use. Ms. Ovrum stated that she could get the Commissioners a more detailed copy of the report. Commissioner Peyton stated that he was not interested in the income capitalization report, but would like to see the results from the others. Commissioner Peyton requested that Ms. Ovrum provide the Commission with a copy of the full appraisal with all of the different valuation methods that were used. Ms. Ovrum stated that she will provide the Commission with a copy of what the County has received. Commissioner White noted that the copies of the appraisal received by the Commission start with Article 9. She noted that the copies do indicate it is a "draft, and she probably should have made it clear that it was not a final document. Commissioner White asked if the final report included the cost approach figures. Ms. Ovrum stated that she did not know. Commissioner White asked if the instructions to the appraiser included directions to do only an income capitalization. Ms. Ovrum stated that the County did not

specify that a particular appraisal be done, but indicated they wanted a going concern value. The appraisal company came back and told them that casinos are sold on the income method, and that was the method they were going to use for Polk County.

Chair Sealock asked Commission members if everyone was in agreement that the previous discussion also covered agenda item 10 - Racing Association of Central Iowa/Prairie Meadows - Report on Progress RE: Agreement on Use of Facility and Relationship with Polk County after debt on the facility is paid. All Commissioners agreed that it did.

After a short break, Chair Sealock called on the Dubuque Racing Association (DRA) to give their report on their charitable contributions. Bruce Wentworth, General Manager of Dubuque Greyhound Park & Casino (DGP&C), introduced Jim Heckman, President of DRA for 1997. Mr. Heckman advised the Commission that in May, the DRA Board met and adopted the recommendation by a sub-committee to award just over $1.2 million to Dubuque area charities. The figure was slightly more than twice the amount of all of the charitable contributions the track has been able to make in the preceding ten years. They solicited the public community at large. The committee spent approximately 150 man hours reviewing the applications. Mr. Heckman stated that 182 organizations out of 186 or 187 applications met the guidelines established by the Board of Directors. Those organizations requested just over $4.2 million and were awarded $1,218,348.14. All 182 organizations received some money. Fifty-four school districts received $318,500 or 26% of the grant funds; 73.5% of the funds went to organizations in the city of Dubuque, and 86.5% of the funds went to organizations located in or serving Dubuque County. Seventy-seven of the 182 organizations received full funding for their projects. Grants ranged from $407 to $27,500, with the average grant being $6,694.22. In addition to the funds distributed to charitable institutions, the taxpayers of the city and county of Dubuque also benefited. The City of Dubuque received a total, including rent payments and distribution of profits, of $4.1 million. The distribution of the profits, less 25% retained by the DRA for its capital improvement fund, 50% is paid to the City and dedicated specifically to the City's capital improvement fund. For 1996, the DRA distributed $9.3 million to the community, including $3.8 million in taxes to the state, $4.1 to the City, and $150,000 for the County of Dubuque, and $1.2 million to charitable organizations. He noted that many of the organizations which received grants do not have strong fund raising capabilities and that it was very rewarding to be able to help by providing funds.

Chair Sealock noted that it had been interesting to watch the operation grow. A few years ago DGP & C was criticized because they were not donating funds to nonprofit but were paying off their debt. She stated that had turned out to be a prudent move. DGP & C was the first facility to retire their debt. Chair Sealock complimented them on their unique newspaper ad listing the grant awards. It was in the shape of a dollar sign which was designed by their Iowa-based advertising agency.

Chair Sealock asked if any of the Commissioners had any other comments or questions regarding Prairie Meadows and Polk County. Commissioner White asked if it was possible to forward a letter

to Polk County following up on the various requests for information. He requested that this agenda item continue to be on the agenda each month until it is resolved or the duration of his term.

Chair Sealock called on Mr. Terp to discuss an arbitration agreement and credit facility. Mr. Terp indicated that both items are corporate related items which could directly or indirectly affect the Council Bluffs property. In various discussions with staff, Ameristar felt it was important the documents be brought before the Commission. The credit agreement increases their credit facility to $125 million, a change from the previous credit facility as it did not guarantee any assets of the Council Bluffs property as it was under construction. Now that the property is completed and producing cash flow and EBITDA, it affects the credit facility which allows Ameristar to borrow, and will be a guarantor as Ameristar Council Bluffs and ACI, the parent company.

The arbitration settlement is the resolution of the purchase of GEM Gaming in order to build The Reserve in Henderson, Nevada. He indicated that it was necessary for the Commission to voice any concerns they might have regarding the document so that they could proceed with the payment to the owners of GEM Gaming.

Commissioner White noted that the Iowa subsidiary is included in the credit facility, but the settlement agreement pertains only to the parent company and Nevada subsidiary. He asked Mr. Terp how the settlement agreement affected the Iowa subsidiary. Mr. Terp stated that it does not affect the Iowa subsidiary in any way, but is being presented to the Commission to make them aware of it, and either approve it or make a motion that it is not relevant to the property and does not require Commission approval. Mr. Terp advised the Commission that the gentlemen named in the settlement agreement were found to be unsuitable for licensing. He noted that the Nevada Gaming Control Board has approved the agreement unanimously. Commissioner White asked if the Commission could approve the settlement agreement subject to approval by the Nevada Gaming Control Board. Mr. Terp indicated that was correct, and that the Nevada Gaming Control Board has approved it on a 3-0 vote, and the Nevada Gaming Commission will be acting on the agreement at their meeting taking place today in Carson City.

Commissioner White moved to approve the proposed settlement agreement subject to the approval of the Nevada Gaming Commission. Commissioner Hansen seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-82)

Mr. Terp stated that the credit facility is with Wells Fargo. He anticipates the credit facility will be signed in a matter of days if the Commission gives its approval. Ameristar received notice on Monday that the Wells Fargo Loan Review Committee had approved all of the provisions of the credit facility.

Commissioner Peyton asked about the proportion of interest of Ameristar Council Bluffs in the actual loan proceeds. He noted the schedule setting forth the various proportions is blank, and

commented that the proportions apparently had not yet been determined. The liability for payment indicates "joint and several" which conceivably puts Ameristar Council Bluffs at risk for funds extended to other subsidiaries of Ameristar. Commissioner Peyton asked Mr. Terp to comment on the use of funds - will they benefit Council Bluffs. Mr. Terp stated that it is a revolving credit facility. It is the same type of facility Ameristar used to build the Council Bluffs and Vicksburg facilities. He noted that in a bank credit facility the existing properties have to justify the cash flow to retire the credit facility. Ameristar is in the process of building The Reserve in Nevada, and even though the property will generate cash flow which will also be used to retire the debt, that is not figured into the operation. Additionally, Ameristar always makes sure that the other properties produce sufficient cash flow, with a cushion, to retire any debt. Each facility is a corporation which is jointly and severally held responsible for all debt incurred in the credit facility.

Hearing no further discussion, Chair Sealock called for a motion. Commissioner Peyton moved to approve the credit facility. Commissioner Allen seconded the motion. As there were no additional comments or questions, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-83)

Chair Sealock called on Catfish Bend Casinos, L.C. (CB) regarding their request for additional gaming positions on the new vessel which was deferred from the May 15, 1997 Commission meeting. Dan Kehl, General Manager of CB, and Gary Hoyer, legal counsel, were present to answer any questions posed by the Commission.

Commissioner Allen stated that she had an opportunity to tour the facility. She indicated she did not regret her earlier concern in October 1996 deferring action on their expansion request. It is apparent to her at this time, with the recent approval of a riverboat license in LaGrange, Missouri, that plans for a riverboat in Keokuk could be severely limited. She noted that CB has been very patient in waiting for a decision. Commissioner Allen stated that she is comfortable in making a motion to allow CB to proceed with their request for additional gaming positions for their new vessel; but wanted to make an observation regarding the additional gaming positions on the new vessel and the projected revenues. She stated that their request from October 1996 contained a conservative study done by DeLoitte and Touche which projected revenues up to $26 million, an increase of $4 million from current revenues. She went on to note that if there is any correlation between the dollars generated per the current gaming positions, and the additional gaming positions, the projected increase in revenues would not be $4 million, but could exceed $12 million. Commissioner Allen stated that figure was based on an average of $150/day/slot and $50/table/day, and using the CB's 1996 revenue figures. She went on to say that even if revenue figures were cut by one-third on the new machines, the expansion would still create added revenue of in excess of $8 million. She feels that CB will do extremely well with the expansion plan. Mr. Kehl indicated he was not sure if the slots would generate $150 per day due to the added number of slots which are basically needed to meet the demands of their week-end business. Commissioner Allen requested that CB and SIRRC

take the appropriate steps to rectify the rift between Ft. Madison, Burlington and Keokuk in order to help assure that the bulk of the gaming business stays in Iowa.

Mr. Hoyer advised that SIRRC is doing their best to serve all three communities, and reminded the Commissioners that Keokuk does share equally in the revenues generated by the nonprofit.

Commissioner White asked if the new boat had been placed into operation. Mr. Kehl stated that it began operations on May 9, 1997. Commissioner White asked if they had noticed an increase in admissions. Mr. Kehl stated they had an increase in May of approximately 10,000 passengers. Commissioner White asked if the new boat had sailed to Keokuk, or if that was possible. Mr. Kehl stated they had not as they would not be allowed to dock in Keokuk as they have an agreement with Midwest Gaming at the current time. Mr. Hoyer stated they would continue to solicit business from the Keokuk market area but that it is very difficult logistically to move the boat which they are currently doing twice a year.

Hearing no further discussion, Chair Sealock called for a motion. Commissioner Peyton moved to approve Catfish Bend's application for additional gaming positions for the new vessel. Commissioner Allen seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-84)

Chair Sealock moved on to the Contract Approval portion of the agenda. The first item under this agenda item was a report by the committee established to work with various compliance issues regarding Chapter 99F.7(4) - Utilization of Iowa vendors. The committee was comprised of Commissioner Hansen and Commissioner Allen. Commissioner Hansen stated the audit of contract compliance was precipitated as the legislation enacting racing and gaming in Iowa was based on promoting tourism and economic growth, as well as helping Iowa-bred horses and Iowa-whelped dogs. A heavy emphasis was placed on economic development in the statutory language and the subsequent rules referenced the utilization of a substantial amount of Iowa goods and services, Iowa employees, and entertainers, etc. Commissioner Hansen stated that he had reviewed the 573 contract submissions from January through May 1997. He found that only 37.3% were purchased from Iowa vendors, which translates to approximately $70 million spent with Iowa vendors and $119.5 million with out-of-state vendors. He feels if appropriate action is not taken, the licensees could possibly spend $300 million with out-of-state vendors. He noted that only 32% of the June contract submissions were with Iowa vendors. He noted there were four problem areas the committee considered in attempting to determine what was a legitimate expenditure level which any licensee could attain. Those problem areas were: out-of-state advertising because of the border cities; some types of goods and services which are not available in Iowa, notably the production of gambling games; and simulcast fees paid to out-of-state venues. Gaming equipment accounts for 4.5% of the gross expenditures, and the other areas account for approximately 5%. Commissioner Hansen noted that the compliance ranged from 0% up to 100% in three of the five months. The cumulative average for the five month period was from a low of 19.8% to a high of 97.7% compliance which

raises the question of why it is possible for some licensees to have a very high compliance level while others have a very low compliance level. Part of the problem is due to geographical location. He complimented Harveys June contract submissions which indicated they would be placing extensive advertising in area newspapers requesting RFPs from Iowa vendors who might be interested in providing them with goods and services.

Commissioner Hansen, on behalf of the committee, and for the Commission to better facilitate the location of Iowa vendors, contacted the Office of Economic Development who is looking at creating a data base to be used by all licensees to locate goods and services; the Association of Business and Industry who will also be looking at developing a data base, and the Iowa Cattlemen's Association. One of his main complaints has been the amount of food products and meat purchased from out-of-state vendors.

Commissioner Hansen noted that the report calls for more data to be provided when an out-of-state vendor is used, and would like to see two competitive bidders when going out-of-state, and when the low bidder does not receive the job, an explanation of why. The Commission would like to know the various levels at which the bids came in. Commissioner Hansen stated that it is not their intent to implement, nor have they implied, a procedure which would require the licensees to do business with an Iowa vendor if their bid is not reasonably competitive. The committee is requesting the same supplemental data be included with related party contracts, at least two competitive bids, and an explanation if the low bid does not receive the job.

At this time, Commissioner Hansen called on the representatives for the two gaming associations: Mr. Pavone, President of the Iowa Riverboat Association, and Mr. Farinella President of the Iowa Gaming Association. Mr. Pavone stated that he feels the numbers which are being reviewed and published are based on contract submissions costing $50,000 or more. He noted BSC's contract submissions for 1996 totaled $2 million, but purchases were closer to $5.5 million. The purchases under $50,000, in many cases, constitute a substantial portion of the purchases, and are not being taken into consideration in the numbers presented in the report. He pointed out there are many national contracts where the local entity gets the business. He feels the numbers need to be clarified. He used BSC's parking contract with a company in Chattanooga, Tennessee which is paid $127,000 per year; however, they keep $8,500 as a management fee and the rest is used to pay local employees, local purchases, etc. Mr. Pavone noted that the licensees would be reviewing all of their purchases for the first six months of 1997, not just those over $50,000, and breaking them down into in-state and out-of-state categories. He feels when all of the numbers are on the table, the numbers will be drastically different. He noted that he had reviewed 26 different out-of-state contracts submitted by BSC but they only amounted to $1,800.

Mr. Farinella stated that Mr. Pavone had summarized the issue very well, and agreed that the whole picture has not been looked at. He noted that each licensee will have situations which are unique to their operation. He feels it will be in the industry's best interest to show they are in compliance

with the intent of the law, and that they are purchasing a substantial portion of their goods and services from Iowa vendors.

Commissioner Hansen stated that he appreciated their comments, and noted that the parties would be meeting again on July 10 at which time the licensees will be submitting computer reports which will provide a breakdown of all their purchases. These reports will provide a much more accurate figure. These reports, along with the recommendations from the committee regarding related parties and out-of-state vendors, will have a positive effect on the industry. He stated that the meeting the previous day had been very productive.

Chair Sealock expressed concern over the fact that two bids were only being requested on out-of-state vendors, and not in-state. Mr. Farinella stated their interpretation was that for those purchases that were not sole-source, they would also attempt to have an in-state bid for comparison purposes.

Commissioner White noted there are contracts which appear to be with out-of-state vendors, but the services or goods are actually provided by an Iowa location. Mr. Farinella noted that the form provided will address this type of situation.

Mr. Pavone noted that part of the discussion during the meeting had centered around buses and out-of-state vendors used to bring individuals to the riverboats. Funds are spent with these out-of-state businesses so that they will do the necessary advertising to fill a bus to bring people to Iowa to spend their tourism dollars, stay in hotels, and patronize the riverboats. This is another issue Mr. Pavone would like to have reviewed - how much business is being brought into Iowa with the funds spent with out-of-state tour operators.

Mr. Farinella stated that it is to everyone's benefit if an economic benefit can be quantified. He noted that the gaming industry is looking into contracting an independent firm to perform an economic impact study of the gaming industry in Iowa. He feels the effort will set a benchmark for the industry and clarify several questions as to direct value and determine the economic spend multipliers that are associated with the industry.

Mr. Farinella noted that in 1996, PM had total purchases of goods and services of $19 million, and spent another $24 million on taxes. Payroll was approximately $26 million.

Commissioner White asked if the report would address the number of Iowa employees at each facility. Commissioner Hansen indicated there were a couple of side issues which he had not touched upon, but would take them up during the meeting next month when the final recommendations are discussed. One of them that was touched upon briefly was the Iowa entertainment requirement which needs additional study as there are some situations where the licensees would like to have celebrity-type entertainers and the Commission needs to be able to accommodate those desires. The other is the requirement that pay levels be at least 25% higher than

the federal wage, and he is suggesting some periodical auditing. Mr. Hansen was advised that this is already being done.

Chair Sealock called on Mr. Pavone from BSC regarding their contract with Anchor Games for the lease of four Wheel of Gold Slot Machines and four Clear Winner Slot Machines which was deferred at the May 15, 1997 Commission meeting.

Commissioner Allen asked what kind of slot machines these were and the average revenue per spin. Mr. Pavone stated these machines are averaging about $320 per day per machine. The Wheel of Gold machines are leased at $1.50 per spin, and revenue is estimated to be $121,000 per year which is the figure used when the original contract was submitted in April. The Clear Winner slots generate approximately $170,000 per year which would be BSC's share of the revenue. Mr. Pavone feels the wording of the lease arrangement is creating the problems, but does not have a solution.

Commissioner White asked if these machines cost $1.50 per spin. Mr. Pavone stated these machines are averaging about $320 per day per machine, but did not have exact figures. Commissioner White asked what denomination the machines were. Mr. Pavone indicated they are 25-cent and $1.00 machines. Terry Hirsch, Director of Riverboat Gambling, indicated that "spin" refers to a spin of the roulette-type wheel on top of the machine which would occur about once in every 64 plays of the machine. He explained that it is an enhanced feature that does not figure into every play. The $1.50 is due when the enhanced feature is activated.

Mr. Farrell asked Mr. Pavone if he knew how much royalty was being paid to Anchor Games per day. Mr. Pavone stated that when the original contracts were submitted to the Commission, they had estimated $121,000 on the Wheel of Gold to Anchor Games, and $170,000 on the Clear Winner machines. He indicated that he was not comfortable quoting figures, but would be willing to pull the report and give the exact net revenues figures for each day. Mr. Farrell noted that BSC is receiving 70% of the revenue on the Clear Winner machines, and Anchor receives 30%. He asked if the same percentages would apply to the Wheel of Gold machines. Mr. Pavone stated that he felt the numbers would be about the same.

Commissioner White stated that his opinion has not changed from last month. He still feels that Anchor Games does not have a license to own and operate games, and is taking profits from the licensee. He likened this situation to the one between Polk County and RACI.

Commissioner Hansen asked Mr. Pavone if the situation wasn't more like Pitney Bowes and the average business mailroom in that BSC does not have any choice as he can not purchase the machines. Mr. Pavone noted that the only thing the licensees could do is approach Anchor Games about changing the way they receive payment for the machines. Many of the licensees in Iowa have these particular games in operation in their facilities. At that point, Anchor Games could either remove the equipment from the facility or establish a flat rate lease payment.

Commissioner White asked if these were the only machines at the facility with this type of lease arrangement. Mr. Pavone answered they were. Commissioner White asked if there were any other equipment or devices on the facility with a similar revenue-sharing arrangement. Mr. Pavone stated there were no other machines with a similar arrangement, but noted there are other types of games which are leased on the same concept. He noted there are some table games - "Caribbean Stud" and "Let It Ride". There was a brief discussion concerning the lease arrangements surrounding the "Let It Ride" table game. Commissioner White stated that the Commission is to control the person who gets the profits, and the Commission does not regulate Anchor Games.

Mr. Pavone stated he would do whatever the Commission asked of him. He noted the original contracts were approved by the Commission in April.

Commissioner Allen concurred with Commissioner White in that a sizeable portion of the revenue is going to an outside interest. She asked Mr. Pavone what recourse was available to him. Should the Commission decide not to approve this contract, BSC would remove the machines and send them back to Anchor Games. Mr. Pavone feels he is in a catch-22 position as the original contracts were approved by the Commission in April of this year, and several of the other facilities also have these machines in operation.

There was a brief discussion concerning the events surrounding the approval of the machines and contract in April. Commissioner White asked why it was back before the Commission at this time. Mr. Pavone stated he felt it was back before the Commission because of the dollar amount exceeding $50,000.

Commissioner Peyton asked Mr. Pavone if he felt the lease agreement between BSC and Anchor Games was consistent with the way the equipment is leased to everyone. Mr. Pavone stated they use the same arrangement with everyone.

Commissioner White stated that he is also troubled by the fact that the equipment is the property of Anchor Games which is an unlicensed entity. Mr. Hirsch stated they are licensed as a manufacturer/distributor and would be allowed to have machines in operation in Iowa. Commissioner White asked if they had a license to operate the gaming devices. Mr. Hirsch stated they did not have a license to operate, but did have a license to own games in Iowa. Mr. Ketterer stated that the issues comes down to whether or not they are operating the games, and how "operate" is defined. Mr. Ketterer asked if it would be appropriate to have someone from the two gaming associations contact Anchor Games to see if someone could attend the next Commission meeting to answer some of the questions. Mr. Pavone indicated that he was in agreement with that suggestion. Mr. Pavone noted that any other companies who have machines in operation under a similar arrangement might as well be contacted so that all of the issues could be dealt with at one time.

Commissioner Peyton stated he wasn't sure that action needed to be taken. Commissioner White moved to defer action on BSC's contract with Anchor Games until the July meeting.

Commissioner Peyton stated that he was not willing to second Commissioner White's motion. He feels the Commission has some discretion in this area, but does understand Commissioner White's concerns. He feels the market place is a natural regulator, and that at some point, the licensee will have to decide whether or not that is the best use of his floor space. In the review criteria, the Commission has had the ability to deny a contract which, in its sole opinion, represents a distribution of profits that differs from commission-approved ownership and beneficial interest. It also references whether or not the contract represents a normal business transaction. In this case, he feels the contract represents a normal business transaction with this particular vendor. He would be less inclined to approve the contract if this were a special situation and the vendor was taking a percentage of the profits or owned all of the machines on the facility. He is also inclined to vote in favor of the contract as the vendor in question is a licensed distributor and subject to regulation.

Chair Sealock noted that Commissioner White's motion had died for lack of a second, and requested another motion. Commissioner Allen asked if the machines were currently in operation. Mr. Pavone indicated they were and have been since the April approval. He asked for clarification as to what action he should be taking in regard to these machines - unplug them or leave them in play. Commissioner Hansen moved to approve the contract subject to review at the July 24 Commission meeting. Commissioner Peyton seconded the motion. Commissioner White asked what Commissioner Hansen's motion meant. Commissioner Hansen stated that by that time the vendor should have been contacted to provide additional information and the Commission would have an opportunity to review any options that may be available to them. Commissioner Hansen noted that Mr. Pavone has the machines in operation which were previously approved by the Commission, and does need some limited approval in order to leave them in operation. Mr. Pavone stated that the machines are the most popular machines in the facility, but does not want to be in violation of the regulations. He feels that Anchor Games will be more than willing to negotiate to resolve the issues due to the number of games operating in Iowa.

Commissioner White expressed concern that Anchor Games is being given an opportunity to indicate that they are only willing to leave the machines if they can share the profits, and that the Commission will capitulate. That is the direction he feels Commissioner Peyton is going. Commissioner Peyton stated that he did not care to hear from Anchor. He requested that Mr. Farrell provide some guidance regarding the legal interpretation of the rules.

Commissioner White stated that he is troubled by the fact that slot machine contracts are coming in for approval at $8,000 per machine, and here is this arrangement calling for $121,000 per year for four machines, and $170,000 paid annually for four machines. In his opinion, they are taking profits from the licensee. Chair Sealock pointed out that Mr. Pavone has indicated that these machines are more than likely worth more than $8,000. Mr. Pavone stated that was correct, but did not have any

idea how much more. Commissioner White reiterated his belief that Anchor Games has set up a way to take profits from the casino by stating that their games are only available under this particular arrangement.

Commissioner Peyton stated that he did not disagree with Commissioner White's comments, but noted that there is probably some proprietary value to the machines, there is some intangible value due to the patents and intellectual property that goes along with the game which they control. Commissioner White noted that every machine would have intellectual property and patents. Commissioner Peyton noted there was competition. Commissioner White agreed, but pointed out that Anchor Game is not the only company with proprietary rights in a machine. Commissioner Peyton said he understands, but feels it is a very fine line and he has gone back and forth on this particular issue.

Chair Sealock called for a roll call vote. The motion carried on a 4-1 vote, Commissioner White voting no. (See Order No. 97-85)

Chair Sealock then called on Mr. Starr to present Miss Marquette's contracts for Commission approval. Mr. Starr submitted the following contracts for Commission approval:

- Aristocrat, Inc. - Slot Machines
- First American Administrators - Health Insurance Provider
- Frana Beer Distributing Co., Inc. - Beer, Wine & Coolers
- Gateway 2000 - Equipment & Software, Misc. Purchases, 1 Purchase Agreement
- IGT - Slot Machines
- Neowa FS, Inc. - LP Fuel
- Peat Marwick LLP - Accounting Services

Chair Sealock called for any comments or questions concerning Miss Marquette's contracts. Commissioner Peyton noted that the contract for Gateway 2000 shows a post office box address in Des Moines, Iowa, but the main office of the company is located in South Dakota in order to avail themselves of the lower tax rates. This contract illustrates the complexity in identifying who is and who is not an Iowa vendor. Commissioner Hansen noted that Peat Marwick has a Des Moines office, but that Miss Marquette has been assigned to the Minneapolis office. Mr. Starr stated that is their main office. There was a brief discussion concerning this contract.

Commissioner Peyton moved to approve the contracts as submitted by Miss Marquette. Commissioner Hansen seconded the motion. Commissioner Allen questioned why the health insurance provider was located in South Dakota. Mr. Starr noted that Miss Marquette's parent company, Sodak Gaming, is located in Rapid City, South Dakota; and that they have secured health

insurance providers through First America for the parent company. The employees from Miss Marquette are able to piggyback on that coverage and receive some advantageous rates for health and dental benefits.

Commissioner White noted that the contract with IGT was marked as a related party contract, and questioned the relationship. Mr. Starr advised Commissioner White that Sodak Gaming is a distributor for IGT slot machines. However, since Sodak became an operator in Iowa, Miss Marquette is precluded from purchasing slot machines from their parent company and must go directly to the manufacturer. They are related to IGT through contractual means because their parent company is Sodak Gaming. Commissioner White referred to Iowa Administrative Rule 4.28(2) which requires that all related party contracts be accompanied by an economic justification, and did not see it attached to this particular contract. Commissioner Peyton questioned if the contract was really a related party contract. Mr. Starr agreed that it probably was not a related party. Everyone agreed that the answer to the related party question should be "No".

Commissioner Allen asked if the slot machines being purchased from Aristocrat and IGT are new machines or an expansion. Mr. Starr noted that the machines are approved gaming devices within the State of Iowa. The machines are a new type of machine. Commissioner White asked if these are replacement machines. Mr. Starr stated that twenty of the machines are replacement machines, and the other twenty are not. He advised the Commission that they are relocating twenty machines to other approved locations on the boat, and twenty machines are new. Commissioner White asked if when the Commission grants a license if there is a certain number of gaming slot machines, tables, etc. approved. He wondered if the licensees could ask to have the number increased at any time. Mr. Starr stated that at one time the Miss Marquette had more machines in operation on the vessel than they currently do. He noted that at one point the Miss Marquette had 698 machines on the vessel, and at the present time there are only 652. Commissioner Allen asked Mr. Starr to identify which machines are the replacement machines. Mr. Starr stated that the IGT machines are replacing IGT machines currently in operation on the vessel and those machines are then being relocated on the vessel. The Aristocrat slot machines are replacing IGT machines. Chair Sealock clarified that none of the machines actually qualify as an expansion of gaming. Mr. Starr indicated that was correct.

Chair Sealock, noting that a motion had been made and seconded, called for the vote. The motion carried unanimously. (See Order No. 97-86)

Chair Sealock called on Ken Bonnet, President of the Mississippi Belle II (MB II), to present their contract with Cordova Dragway Park, LTD as a title rights sponsor. He noted this is the first time the two businesses have entered a joint marketing venture. Mr. Bonnet stated that MB II's logo will be placed on every piece of mail, TV, or media advertising that they place. Cordova is the sponsor of the World Series of drag racing this year and will be hosting the Summer Nationals which is one of the largest events in the country.

Commissioner Peyton moved to approve the contract as submitted. Commissioner Hansen seconded the motion which carried unanimously. (See Order No. 97-87)

Chair Sealock called on Harveys to present their contracts for Commission approval. Art Hill, Controller for Harveys, presented the following contracts:

- Feuring Promotions - Advertising Specialty Items
- Goodkind and Goodkind - Direct Mail Services
- Cleanest Laundry in Town - Laundry Service
- Midlands Electric - Electrical Requirements
- Lincoln Poultry - Food Service
- Style Painting Inc. - Painting Requirements
- Omni Engineering - Snow Removal and Maintenance Requirements
- Lou Rawls Productions Inc. - Two Concert Performances

Hearing no questions regarding the above contracts, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted by Harveys. Commissioner Hansen seconded the motion which carried unanimously. (See Order No. 97-88)

Chair Sealock called on Mr. Terp from Ameristar to present their contracts for approval. Mr. Terp presented the following contracts:

- Ameristar Casino Vicksburg - Paydown Intercompany Balance
- Coffee King, Inc. - Coffee Products
- Infogenesis - Computer Hardware, Software/Licenses, Supplies and Software Maintenance
- Lodgenet Entertainment Corporation - In-Room Movie/Game Rentals for Hotel
- Loffredo Fresh Produce Co. Inc. - Prepared Fresh Produce

Commissioner Allen asked for an explanation of the contract with Ameristar Casino Vicksburg. Mr. Terp explained that Ameristar Casino Vicksburg had paid some of the opening expenses for the Council Bluffs facility. The expense had been carried on the books of the Council Bluffs facility since the beginning and they felt it was appropriate to clean it up at this time.

Hearing no further questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted by Ameristar Casino. Commissioner Allen seconded the motion which carried unanimously. (See Order No. 97-89)

Commissioner Hansen advised Chair Sealock that he had provided Mr. Terp documentation as a result of his audit which showed there were five or six contracts from November 1996 and January 1997 in which they utilized one of the board members as a contractor and the contracts were not disclosed as related party contracts. He suggested that the matter be resolved between Ameristar and

IRGC staff prior to the next Commission meeting. Mr. Terp stated the contracts would be refiled, and that the process had already been started. Mr. Terp distributed an update on Project 21 and their cruise schedule.

Chair Sealock called on Mr. Rix to present the contracts submitted by DDJ for Commission approval. Mr. Rix presented the following contracts:

- Riverboat Capital Investment Company, L.C. - Plan of Liquidation and Dissolution of Riverboat Capital Investment Company, L.C. (Unitholders of GDREC), Distribution of Units of GDREC to Unitholders of RCIC
- FINOVA Capital Corporation - Amendment to Loan and Security Agreement, First Amendment to Vessel Chattel Mortgage
- Newt Marine - Assisting DDJ vessel into Ice Harbor when necessary
- Shuffle Master Gaming - "Let It Ride" Table Games; Poker Shufflers

Commissioner Peyton moved to approve the contracts as submitted by DDJ. Commissioner Hansen seconded the motion.

Commissioner White asked what kind of payment arrangement was attached to the "Let It Ride" table games. Mr. Rix stated it is a flat rate fee that is not tied into the usage or revenues generated by the machines. Commissioner Peyton stated that the $1900 per month lease payment more than likely far exceeds the value of the machine. Mr. Rix noted that when the Anchor Game machines were first put into operation they received five times the play of the other slot machines on the boat. They have three of the machines in question and have had them in operation for about one year. The play level has dropped, but they are still played three times the play of the other machines.

Commissioner Allen asked how often the tug was required to assist the DDJ into the harbor. Mr. Rix indicated the tug is needed on windy days. One of the problems is that there are only two tug companies in the area; one is out-of-state and the other is a related party. The out-of-state company requires 15-20 minutes to reach the harbor area whereas the related party company is only 100 feet away.

Chair Sealock asked how much smaller the current boat is than the Casino Belle was. Mr. Rix indicated he was not sure. Mr. Hirsch stated that he thought the boat was a little larger than the Casino Belle. Chair Sealock called for the vote. The motion carried unanimously. (See Order No. 97-90)

Chair Sealock called on Bluffs Run to present their contracts. Barry Sevedge, Director of Operations, presented the following contracts for Commission approval:

- Bluffs Electric Company - Traffic Signal for Main Casino Entrance on 23rd Avenue
- United Tote Company - Service Contract for United Tote Horizon System

Commissioner Peyton moved to approve the contracts as submitted. Commissioner Allen seconded the motion which carried unanimously. (See Order No. 97-91)

Chair Sealock moved to Administrative Business. Mr. Ketterer stated that the Commission needed to establish dates for the October 1997 and April 1998 Commission meetings. Mr. Ketterer noted that the dates of October 21-24, Tuesday through Friday, had been suggested. The Commissioners decided to hold the October meeting on Friday, the 24th in Clinton. Commissioner White requested the meeting be changed to Friday, April 17th. The meeting will be held in Burlington.

Mr. Ketterer advised the Commission that Public Notice was being given to all parties interested in requesting the funds from the Greyhound Promotion Fund. Those requests are due in IRGC's Des Moines office by July 7, 1997. The application to receive the funds was attached to all agendas and additional copies were available at the viewing table at the Commission meeting.

As there was no one from the public who wished to address the Commission, Chair Sealock called for a motion to adjourn the meeting. Commissioner Peyton so moved. Commissioner Hansen seconded the motion which carried unanimously.

MINUTES TAKEN BY:

Julie D. Herrick

JULIE D. HERRICK CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
JULY 24, 1997

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, July 24, 1997 in the Auditorium of the Wallace State Office Building, Des Moines, Iowa. Commission members present were Rita Sealock, Chair; Brad Peyton, Vice Chair, and members Jackie Allen, Bill Hansen and Harold White.

Chair Sealock called the meeting to order at 8:30 A.M. and requested a motion to approve the agenda. Commissioner Peyton moved to approve the agenda. Commissioner Hansen seconded the motion, which carried unanimously.

Chair Sealock requested a motion to go into Executive Session for the purpose of receiving advice from legal counsel pursuant to Iowa Code Section 21.5(c). Commissioner Allen moved to go into Executive Session. Commissioner Peyton seconded the motion, which carried unanimously.

Following Executive Session, Chair Sealock moved to the election of a chair and vice chair for the Commission. Commissioner Peyton nominated Rita Sealock as Chair. Commissioner White seconded the motion. Hearing no further discussion, Chair Sealock called for a roll call vote. The motion carried 4-0, Chair Sealock abstaining. (See Order No. 97- 92)

Chair Sealock called for a nomination for Vice Chair. Commissioner Hansen nominated Brad Peyton as Vice Chair. Commissioner Allen seconded the motion. Hearing no further discussion, Chair Sealock called for a roll call vote. The motion carried unanimously. (See Order No. 97-93)

Chair Sealock moved to the approval of the minutes from the June 19, 1997 Commission meeting. She noted there was a correction on the last line on page 6. It should read, "... and not <u>just</u> the operator." Commissioner Peyton moved to approve the minutes as corrected. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 97-94)

Chair Sealock then called on Jack Ketterer, Administrator of IRGC, to address the Rules being presented under Notice of Intended Action. Mr. Ketterer advised the Commission that the rules before them dealt with the responsibilities of the gaming representatives and the gaming board formerly covered in Chapter 25. They have been moved to Chapter 4 so they will apply uniformly to riverboat and racetrack enclosures. He recommended the Commission act on items 5A - Amend Chapter 4 by added new rules and renumbering current rules, B – Iowa Administrative Rule 491-4.1 – Gaming Official, C – Iowa Administrative Rule 491-4.4 - Penalties, and E – Amend Chapter 25 by rescinding and reserving rules. Commissioner Peyton moved to approve the Notice of Intended Action

regarding Chapter 4, Iowa Administrative Rules 491-4.1, 4.4 and Chapter 25. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 97-95)

Mr. Ketterer then moved to item 5F, Amend Iowa Administrative Rule 491-25.11(2), paragraph "b" which is a clarification in the statutory reference by deleting the reference to the Amended 1994 Acts which are now part of the Code. The reference pertained to racetrack enclosures and defined video machines. Hearing no further discussion, Chair Sealock called for a motion. Commissioner Hansen moved to approve the Notice of Intended Action as presented. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-96)

Mr. Ketterer then moved to Iowa Administrative Rule 491-20.14 which is the rule requiring one year to pass after the revocation or denial of a license. There was concern as to whether this rule would apply to qualified sponsoring organizations, boat operators, or those licensed to operate gambling games at racetrack enclosures. Language has been added to make this rule more explicit and left in the language that allows the Commission to deny without prejudice to escape the one-year waiting period before reapplying. Chair Sealock called for a motion. Commissioner Allen moved to approve the changes to Iowa Administrative Rule 491-20.14 – Application after denial or revocation. Commissioner Peyton seconded the motion.

Commissioner Peyton stated the change was justified by the confusion following the reapplication of an applicant for a license in Osceola. He does not feel the proposed change was in response to the Osceola situation, but does clarify for purposes of future applications, that the applicant for the license to conduct gambling games and the license to operate an excursion gambling boat, which are two separate parties, are essentially considered one applicant for purposes of the one year requirement. It continues to exempt a denial without prejudice from the one year waiting period.

Hearing no further discussion regarding the proposed change, Chair Sealock called for the vote regarding Iowa Administrative Rule 491-20.14. The motion carried unanimously. (See Order No. 97-97)

Chair Sealock then called on Racing Association of Central Iowa/Prairie Meadows Racetrack and Casino. A court reporter from Johnson Court Reporters was present for this portion of the Commission meeting. The transcript, by this reference, is incorporated and made a part of these official minutes. (See Order No. 97-98 and Order No. 97-99) (The transcript will be available for viewing in IRGC's office at 717 E. Court Avenue, Suite B, Des Moines, Iowa; or a copy may be obtained from Johnson Court Reporters,)

Chair Sealock moved to the Approval of Distribution of Greyhound Promotion Fund as Authorized by Iowa Code 99D.12(2)C. Linda Vanderloo, Director of Racing/Administration for IRGC, advised the Commissioners their packets contained background information on what type of information was sent out this year and a staff

recommendation. She noted that this year she had asked the recipient from last year to provide more accountability as to the use of the funds.

Ron Mullen, a member of the Board of Directors of the Iowa Greyhound Association (IGA), advised the Commission that with the help of the greyhound promotion fund, Bluffs Run Casino (BRC), Dubuque Greyhound Park and Casino (DGP&C), they hope to make the greyhound business a better business in Iowa.

Chair Sealock asked if the association was getting more participation from the southwest corner of the state. Mr. Mullen indicated the association has about 125 voting members and approximately 300 non-voting members.

Commissioner Peyton asked Ms. Vanderloo about the audit. Ms. Vanderloo stated that as she reviewed IGA's application regarding the accounting for the funds received last year, there were items she felt required additional review. When she requested the audit, she thought she would receive more than what she did, and that the audit would consist of more than one page for $1,100. She has requested that Mr. Mullen have someone in attendance at the August meeting who would be able to explain the audit in detail.

Commissioner Peyton asked Ms. Vanderloo if she was satisfied with the audit. Ms. Vanderloo stated she felt the audit should provide more detail, specifically in relation to the amount of money received compared to what they received in the past. She feels they should be held to a higher level of accountability than they have been in the past. When asked how the Commission could accomplish that, she advised that they ask more questions.

Ms. Vanderloo recommended that the following three items, which have been agreed to by legal counsel for BRC and IGA, be incorporated into the motion. Commissioner Allen moved to approve the distribution of the Dog Racing Promotion Fund to IGA. Commissioner Hansen seconded the motion. Chair Sealock requested that Ms. Vanderloo read the staff recommendation regarding the agreed to items.

Ms. Vanderloo read the following: "Staff recommends the approval of the Iowa Greyhound Association as the recipient of the Dog Racing Promotion Fund for Fiscal Year 1998, if the following conditions are met:

> That the arbitration panel, if needed, be composed of the same members as were impaneled for the 1997 purse supplement/escrow decision. (It is our understanding that Rick Olson, Lorraine May and Nancy Whittenburg have agreed to arbitrate, if necessary.)
>
> That the parties' negotiate/arbitrate the use of escrow corpus and income concurrently with the negotiation/arbitration of the purse supplement from gaming proceeds for 1998.

That the parties negotiate/arbitrate all proposals by the September 1997 Commission agenda preparation date of September 8, 1997. (This date is a drop-dead date in order for Julie to distribute all data.)

An IGA representative be available at the August 22, 1997 Commission meeting in Davenport, Iowa, to respond to questions regarding the line item audit expense, cost of and how/when the audit was actually completed and provide the last IGA fiscal year full audit.

Hearing no further discussion regarding the motion, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-100)

Chair Sealock then called on the Iowa West Racing Association (IWRA) for a presentation regarding their grant distributions. Tony Payne, Executive Director for IWRA, introduced Georgia Sievers, an originating Board Member in 1985/86, and Jerry Mathiason, new IWRA staff member.

Mr. Payne advised the Commission that during the last grant period, that ended on June 15, 1997, IWRA presented gifts totaling $4,139,000.00 to 25 different grantees, for a total distribution during the last 24 months of $14,364,000.00 to 72 grantees. The funds have been broken down into four different categories: arts beautification and historical - $2,410,000.00; community affairs - $8,809,000.00; education - $1,252,000.00; and human services - $1,893,000.00. It is IWRA's hope that they will be able to distribute between $4 - $5 million every six months. During the ten years IWRA has been in existence, total grants amount to $16.1 million to 435 recipients/grantees in 72 different communities.

Mr. Payne advised the Commissioners that IWRA has formed a second foundation called Southwest Iowa Foundation (SWIF) to foster philanthropy in the 8 counties surrounding Pottawattamie County: Harrison, Shelby, Audubon, Mills, Cass, Fremont, Page and Montgomery. Mr. Mathiason advised the Commissioners that he had seen a flyer for a conference on Sustainable Communities to be held in Des Moines in September. One of the topics will be "What Foundations Can Do To Build Community". This is the goal of the new foundation. This foundation will be giving each county an opportunity to develop a community foundation which will be given $50,000.00 each year for ten years, for a potential of $4 million. The community foundations will attempt to find matching funds within their county. Mr. Mathiason stated that SWIF would be utilizing the administrative services of the Omaha Community Foundation to help the counties develop their community foundations. He noted that Des Moines and Sioux City are the only communities in Iowa with community foundations. SWIF will have a five-member board consisting of representation from IWRA. Mr. Payne noted that each county community foundation would have their own board of directors who would have the responsibility of determining how the funds are used. He thanked IWRA's licensees: Bluffs Run Casino, Ameristar and Harveys Casino.

Commissioner White noted that the brochure distributed by Mr. Payne indicated that IWRA had distributed $16 million. He asked the time frame in which those funds had been distributed. Mr. Payne advised that the funds had been distributed since the inception of the foundation. He noted that from 1986 through 1994, the total was about $2 million, with $14 million coming from the last two years with the addition of the riverboats and slot machines at BRC.

Commissioner White stated that he had compared the financial activity of RACI and IWRA. He noted that casino revenue is within $2 million of each other and salaries are comparable to revenue. He stated that in 1995 and 1996, IWRA paid $24 million in management fees, which RACI doesn't have. He stated that he would like an explanation of the management fees as part of their license renewal. He noted they have paid more in one year for management fees than they have paid out to charities over a ten-year period.

Commissioner White asked if IWRA was a non-profit license holder. Mr. Payne stated that IWRA is a non-profit corporation organized under the laws of the state of Iowa. Therefore, it can and is the license holder under Iowa code Section 99D.8. However, it is taxable for federal income tax purposes as it is not exempt from taxation under any of the provisions of Section 501 of the Internal Revenue Code. Commissioner White asked if IWRA was the licensee. Mr. Payne advised that IWRA is the license holder for BRC, Ameristar and Harveys; and they own and operate BRC.

Commissioner White asked who was making the determination as to where the funds would go. Mr. Payne stated that the Iowa West Foundation board of 7 members makes that determination. He noted that those board members have no connection to the management of the greyhound track or casinos.

Commissioner White noted that the Commission had just voted to start the necessary procedures to revoke the license of PM because the non-profit was not the "true owner of the license", and with the information just provided, then IWRA should be subject to revocation as well. Mr. Payne stated that when BR was started in 1986, it was with venture capital, and there were no government-entity funds behind the funding. Commissioner White stated that the Commission was insisting that the non-profit group be in charge of the distribution of funds. He noted that the Commission is interested in finding out why IWRA is paying someone $24 million that RACI does not have to pay. He stated that he is not implying that anything is remiss with the arrangement.

Mr. Payne advised Commissioner White that the Iowa West Foundation board consists of two individuals who have their own insurance agencies, one retail food service individual, one CPA, one real estate individual, one homemaker, and one banker. Four were on the original board with the other three having been elected within the last five years. There are no elected public officials on the board.

Commissioner Peyton stated that he felt Commissioner White was attempting to determine the justification for the management fee to an out-of-state company. He stated that he was cognizant of the fact that the board represents a broad community effort. He

stated that the Commission needs to determine if it is reasonable and fair so that the licensee is not engaging in profit sharing with a non-licensee. Mr. Payne stated that the agreement was on file with the Commission; Commissioner White pointed out that the agreement between Polk County and RACI was also on file with the Commission.

Commissioner White noted that on the positive side, IWRA is reaching out to numerous counties and communities when making their charitable distributions, not keeping all of the money in Pottawattamie County. Mr. Payne noted that IWRA is finding it difficult to give the money away and keep everyone happy, particularly in light of the referendum coming in 2002.

Chair Sealock moved on to the Contract Approval portion of the agenda, and asked for the Committee report on compliance with Chapter 99F.7(4) regarding the utilization of Iowa vendors. Commissioner Hansen stated that three meetings had been held with John Pavone, General Manager of the Belle of Sioux City, and Bob Farinella, General Manager of PMR&C, and had obtained unparalleled success. He distributed a two-page report to the other Commissioners for them to peruse at their leisure, with a final report to be given at the August Commission meeting.

Chair Sealock expressed her appreciation for everyone's time and effort on this issue which will allow the Commission to get an idea of what is actually being spent.

Commissioner Hansen advised that the licensees would be submitting quarterly economic impact reports, and that a new contract approval form has been devised. This form will go into effect immediately.

Commissioner Allen also expressed her appreciation for everyone's time, efforts and cooperation on this issue.

Chair Sealock called on Bruce Wentworth, General Manager of DGP&C, who presented the following contracts for approval:

- Hawkeye Food Systems – Food Items, Restaurant Supplies
- Midwest Meats – Food Items

Hearing no further discussion, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted by DGP&C. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 97-101)

Chair Sealock then called on Barry Sevedge, Director of Operations for BRC, who presented the following contracts for Commission approval:

- Pegler Sysco – Dishwasher for Second Floor Kitchen
- Andersen Construction Company – Partial remodel of second floor kitchen for new dishwasher

- P. A. Braunger Food Service – Meat
- Mid America Pay Phones – Coin Operated Telephone Service

Hearing no discussion regarding the contracts, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contracts as submitted. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-102)

Chair Sealock called on Mr. Pavone with the Belle of Sioux City regarding their contract. She noted that Jeff Farrell, Assistant Attorney General representing the Commission, wanted to make a statement. Mr. Farrell stated that he had raised some significant legal issues about the payment on the lease surrounding the Wheel of Gold and Clear Winner slot machines. He noted that he, Commissioner White and members of staff had met with representatives from Anchor Game on Wednesday afternoon. Those representatives indicated they would like to appear at a Commission meeting to discuss this issue at a time when the Commission will be deciding this issue. Mr. Farrell noted that Anchor has games in place at almost all of the licensees. He feels this is a significant issue which could affect other games which are in use or could come into use, and recommended that the Commission defer this contract until the August meeting so that Anchor Games could have an opportunity to address the Commission.

Commissioner White concurred there were some legal questions regarding the participation agreement. He agreed that since it would affect several licensees that the issue should be deferred, but asked that notice be given that the Commission would consider and decide this issue at its August meeting.

Commissioner White moved that Commission's consideration of Agenda Item 9D – Belle of Sioux City's contract with Anchor Games – be deferred until the August 22, 1997 meeting in Davenport, Iowa. Commissioner Allen seconded the motion. The motion carried unanimously. (See Order No. 97-103)

Chair Sealock then called on Doug Gross, legal counsel for Dubuque Diamond Jo, who presented a Proposed Distribution to Greater Dubuque Riverboat Entertainment Company Unitholders for Commission approval. Mr. Gross stated that the management committee was requesting permission to distribute $25,000 to the non-development unitholders of GDREC. He noted the company has sufficient cash on hand to allow for distribution of some of the initial equity investments in GDREC. The Operating Agreement requires that distribution be made on a 95% basis to the non-developer members and 5% to the developer members. Under the present request, $2,026,286.84 would be distributed. Attached to the request was a schedule showing what the distributions would be if it were done in the manner presented. Following discussions with staff, GDREC is proposing that the funds pertaining to 17.5 shares which are being disclaimed would be held in an escrow account until litigation regarding the disclaimed units is resolved. All other distributions would be made according to the schedule.

Chair Sealock asked if the request was for payment to non-developers only. Mr. Gross stated that $50,657.17 relating to the first 17.5 units held by Joseph P. & Paula M. Zwack

would be distributed to them, but the funds for the second 17.5 disclaimed units would not be distributed until litigation has been resolved. He stated that William Alfredo has filed litigation claiming a right to those 17.5 units.

Mr. Ketterer advised Mr. Gross that since the discussions with staff, additional discussion among staff members had taken place. He noted that it would be staff's recommendation that the 5% to the developer units in total be deferred until the August meeting to give them an opportunity to review the order and provide an opportunity for the matter to be discussed with legal counsel. Mr. Ketterer stated that staff would recommend approval of the 95% distribution to the non-developer units. Mr. Farrell asked if any of the non-developer units were affected by the litigation. Mr. Gross indicated they were not. He stated that the maximum amount that Mr. Alfredo could claim under litigation would be 32 units, which are all developer units. Mr. Ketterer stated that he had heard that Mr. Alfredo could possibly claim more than that. Mr. Farrell asked if a trial date had been set. Mr. Gross noted that DRA had been added as a party to the litigation, the venue has been changed to Waterloo from Dubuque, and the District Court Judge has a trial scheduling conference set for July 30. GDREC has filed a request for a summary judgement; however, the Judge feels there are some issues of fact remaining and has not granted that request. Mr. Gross stated they have requested that the issues be set forth for them. He stated GDREC also intends to file a motion for adjudication of law points specifically relating to the issue of property interests, which he believes, is the main issue in this case. GDREC hopes to resolve this issue as quickly as they can.

Commissioner Hansen moved to approve distribution to the non-developer unit holders only. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-104)

Chair Sealock called on Art Hill, Comptroller for Harveys Kanesville Queen (Harveys), who advised the Commissioners that the contract with Anderson Construction Company for construction of the roof top restaurant was submitted at the April meeting. He sent in another copy of the signed form, so there are actually only two contracts that need to be approved today. Those contracts are:

- Andersen Construction Company – Construction of offices on the lower level of the hotel at Harveys Hotel Casino
- Aristocrat Incorporated – Sixteen Aristocrat Slot Machines which will replaced existing units at casino

Hearing no additional discussion regarding the above contracts, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted by Harveys. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 97-105)

Chair Sealock then called on Mark Lohman, General Manager of The President, who presented a contract with Rykoff-Sexton, Inc. for food products for restaurant outlets. Hearing no discussion, Chair Sealock called for a motion. Commissioner Hansen moved

to approve the contract as submitted. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-106)

Chair Sealock called on Jim Starr, General Manager of the Miss Marquette. Mr. Starr introduced Clay Trulson of Sodak Gaming who will address the second contract before the Commission. Mr. Starr presented the following contracts for Commission approval:

- Louisiana Seafood Exchange – Seafood Items
- PDS Financial Corporation – Monthly Lease Payments

Commissioner Allen asked what the appraised value of the equipment was. Mr. Trulson advised that the equipment was appraised at $7.5 million

Commissioner Peyton asked what the effective rate of interest was in the financing. Mr. Trulson stated that it was 20%. Commissioner Peyton asked Mr. Trulson his opinion of the rate. Mr. Trulson stated that Sodak felt it was a good business decision as there are other issues regarding the sale and lease back. The idea is that the proceeds from the sale will be used to pay down Sodak debt, which will then be used to pay down the credit facility with the banks. This will allow Sodak to have additional credit facilities to expand their gaming operations. Sodak is actively seeking mergers and acquisitions. Mr. Trulson stated that PDS has purchased $12 million on contracts that Sodak sold to them. They have a contingent liability if those contracts do not perform. In order for Miss Marquette to come out ahead in this transaction, Sodak will assume approximately $2.2 million of debt to the former shareholders and contribute those funds to equity. Commissioner Peyton asked for clarification. Mr. Trulson stated that Miss Marquette's balance sheet will look better because of the consolidation and better capitalization.

Commissioner Peyton asked Mr. Trulson if he had any idea of some of the general terms regarding equity and leverage, etc. Mr. Trulson stated that currently Miss Marquette owes Sodak $22 million, and other debt of approximately $5 million. Additionally, when Sodak acquired Miss Marquette's operation a year ago, they planned to restructure the capitalization. Sodak is committed to keeping the Miss Marquette in operation at its current location. He noted that the prior operators had the operation thinly capitalized, and they are considering adding additional debt into capitalization. Mr. Trulson reminded the Commissioners that the $22 million owed to Sodak is intercompany. As long as Sodak owns the boat, and it is leased by the Miss Marquette, they will look at the earnings before interest, taxes, and depreciation as the cash flow.

Commissioner Peyton asked if PDS was acting as the principal in this transaction, but noted that they also are a broker. Mr. Trulson stated that was correct, noting that PDS sells off paper. He noted that PDS is located in Minneapolis, and that Sodak has done business with PDS the entire time he has been with Sodak. PDS does extensive financing of gaming casinos.

Commissioner Peyton asked if there was any relationship between Sodak and PDS. Mr. Trulson indicated there was not.

Terry Hirsch, Director of Riverboat Gambling for IRGC, noted that the whole transaction is a series of transactions, one being a company sale. He noted that the transaction does involve gaming equipment and that PDS is licensed by the State to be a distributor of gaming equipment so the sale and lease back scenario is different than the Polk County situation. Mr. Trulson noted that at the conclusion of the capital lease, Sodak would be able to purchase the gaming equipment for one dollar.

Commissioner Peyton moved to approve the contracts for Miss Marquette as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 97-107)

Chair Sealock called on Dan Kehl, General Manager of Catfish Bend Casino (CBC), who noted that five of the seven contracts had been previously approved, but expenses were higher than anticipated. Mr. Kehl submitted the following contracts for Commission approval:

- Mississippi Belle II – Restaurant Equipment, Labor – Fire, Food Service
- Jet Gas – Boat Fuel
- Carl A. Nelson & Co. – Ceiling Tile Installation, Barge Enclosure
- Norm's Koestner Electric, Inc. – Electrical Contractor for Boat and Barge
- TransSierra – Surveillance Equipment
- Mile Nelson Concrete Paving Company – Parking Lot
- Smith St. John – Dining Room Furniture, Small Wares, Etc.

Mr. Kehl advised the Commissioners that the first contract was a related party contract with the Mississippi Belle II in Clinton. Three of the board members for CBC are related to the owners of the Mississippi Belle II. Commissioner Peyton asked if the expenses were approved by the non-related board members. Mr. Kehl indicated they were.

Hearing no further discussion regarding the contracts for CBC, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contracts as submitted. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-108)

Chair Sealock asked how things were going on recovering from the fire. Mr. Kehl stated they are currently working with an architect to rebuild the barge, and hope that construction will start in early September. They are working with the City of Burlington and hope to have an announcement at the meeting in Davenport. The dock site in Burlington needs to be reconfigured and will have a new dock site that is 600 feet south from the current location. CBC's improvements will be approximately $1.7 million, and Burlington has another $2.2 million that they would like to do in order to complete the renovation of the riverfront. With the cooperation of CBC, City of Burlington and Riverfront Development, phases one and two of the renovation have been completed. The parties hope to complete phases three and four this year through a lease agreement in

which they issue bonds for the improvements, and CBC would pay a lease fee to cover their portion of the improvements. The City would use the rest of the gaming taxes to pay off the balance of their improvements.

Chair Sealock then called on Jeff Terp, Vice President of Business Development for Ameristar Casinos, who presented the following contracts for Commission approval:

- Ameristar Casinos, Inc. – Management Agreement for Services Rendered, including Marketing, Financing, Purchasing, Chain Support and Administrative Support
- Cactus Pete's Resort Casino – Repayment for Insurance Premiums Paid by Affiliate During Opening and Several Months Thereafter
- Hawkeye Food Systems, Inc. – Various Food Supplies
- International Electronic Protection – Various Electronic Camera and Surveillance Equipment
- Latham & Watkins – Specialty Legal Services
- LDDS Worldcom – Long Distance and Phone Switch Service
- Mercy Hospital – Medical Assistance for Employees
- National Paper & Supply – Paper and Various Restroom Supplies
- P. A. Braunger Foodservice, Inc. – Various Food Supplies
- VLC – Specialty Gaming Devices
- Wagner-Hohns-Inglis, Inc. – Specialty Legal Services
- Approval of Offering Memorandum (Senior Subordinated Notes)

Commissioner Allen asked why eight of the twelve contracts were oral. Mr. Terp indicated those were done by purchase orders rather than written contracts. The contract with Cactus Pete's is similar a to contract approved last month with Ameristar Vicksburg. The contract with Latham & Watkins is for legal services regarding the Perini arbitration at the Council Bluffs project. Legal fees are based on an hourly rate and typically are not written contracts. Mr. Terp advised the Commissioners that the two largest oral contracts relate to the Perini arbitration; and that they will see similar requests for contract approval during the next two months as the arbitration process proceeds. There will also be a similar request for Dreher, Simpson who is their local counsel.

Commissioner Allen asked Mr. Terp about the management contract. Mr. Terp advised that this is a management agreement between the corporate office and the subsidiary. Ameristar has not had management contracts previously. They simply used the profits from a property to retire the debt related to that property. Upon a suggestion from the Commission, a formal management agreement has been instituted. The agreement calls for 5%, which is the average for a corporate/subsidiary management agreement in the gaming industry.

Commissioner Peyton asked if the fees were to replace the reimbursement of corporate overhead. Mr. Terp stated that it would be used to cover almost all of the corporate overhead related to the administration of the employee benefit programs, and corporate-level management. Commissioner Peyton clarified that the management agreement

would replace the inter-company allocation of expenses. Mr. Terp noted that last year, money was taken out every month. The fees in the management agreement are based on revenue rather than a flat monthly fee. Commissioner Peyton asked how the two compared. Mr. Terp said the fees contemplated in the management agreement would be substantially lower, and any money left over at the end of the year will be used for debt retirement.

Commissioner White asked how the management fee would affect the subsidiary. Mr. Terp stated that it would have no effect as less money is being taken out under the management agreement. He noted that if the Commission was concerned about a potential negative effect on the property, Ameristar, by its bank covenants, is required to put 5% of gross revenues on an annualized basis back into a maintenance account. Ameristar normally exceeds that every year as they have a reinvestment philosophy.

Commissioner White asked what would happen with any excess funds. Mr. Terp stated that funds would be available at year-end, or on a quarterly basis, to pay down debt. Commissioner White asked if an analysis of corporate overhead had been done to justify the 5%. Mr. Terp stated that such an analysis had been done, and that they had reviewed various management agreements with the lowest fee being 3 ½%, the average was 5 – 5 ½% or more, with some being in the 13% - 18% range. Commissioner White asked if specific hours were attributed to the various properties. Mr. Terp stated they did not break down the number of hours each person spent at a property, but divided their time evenly between the four properties. Commissioner White asked what other inter-company expenses between the properties the Commission was going to see. Mr. Terp stated that Vicksburg was taken care of last month, and Cactus Pete was before the Commission now, and there should not be any other payments from one subsidiary to another, nor should there be any more payments to corporate other than the monthly management fee. At the year-end, any profits in this account would be used to retire the bank line of credit. Mr. Terp advised the Commission all of the debt is now at the corporate level, and the senior subordinated debt has been finalized. The boat is paid off, the equipment financing on the local level has been retired, and all of the property financing previously approved by the Commission has been moved to the corporate level. There is no subsidiary debt anywhere in the company. Commissioner White asked if the management agreement would have any effect on taxes paid. Mr. Terp indicated there would be no effect in Iowa, and that they would receive a credit in Mississippi.

Commissioner White moved to approve the contracts as submitted by Ameristar. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-109)

Commissioner Peyton asked Mr. Terp if the private placement of senior subordinated notes was now public. Mr. Terp stated it was, that the placement had been sold, closed and the funds placed in the bank. The line of credit has been reduced as explained in the public document.

Mr. Terp advised the Commissioners that the one year commitment to Project 21 is up, and distributed the final annual report showing the expenditure of $40,000 which did not include any of Jane Bell's time and salary as project coordinator. Mr. Terp stated they would continue to participate in Project 21.

Chair Sealock called on Shawn Ellis, General Manager of Lady Luck Bettendorf (Lady Luck), to present their contracts for Commission approval. Curt Beason, legal counsel, was also present. Mr. Ellis presented the following contracts for Commission approval:

- CC Services – Leases for two 1995 Metrotrans Shuttle Buses/two 1995 Cadillac Limos
- DC Sales, Inc. – Bus Signage and Banners for Construction Barriers
- Ford Entertainment and Productions – Appearance Agreements
- Franklin Press – Printing and Mailing of Direct Mail Material
- GEMACO Playing Card Co. – Playing Card Contract Renewal
- General Car & Truck Leasing – Maintenance Contracts for Vehicles
- Howard J. Press & Associates, Inc. – Computer Equipment
- JEM Associates – Kitchen/Buffet Design
- Midwest Transit Equipment, Inc. – Van Purchase
- Parker Distributing – Diesel Fuel for Riverboat
- Slade Gordon – Food Service Supplier
- Tai Foong, USA, Inc. – Food Service Supplier
- That's Entertainment International – Entertainment Bookings
- Triple "R" Tours – Group Sales
- Uniforms to You – Uniform Design & Supply

Mr. Ellis advised the Commissioners that some of the contracts are attributable to the construction and moving customers around. He stated that approximately 65% of the parking lot has been lost at this time. Chair Sealock indicated that there is quite a bit of excitement around the state about the construction project.

Commissioner Allen noted that several of Lady Luck's contracts were with out-of-state vendors, such as the limos, bus signage and banners for construction barriers, and printing. Mr. Ellis advised Commissioner Allen that all of the direct mail for all of the Lady Luck properties is done in Nevada. He noted that the large purchases or leases were let for bids. If the bids were close, the Iowa vendor would receive the contract even if they were slightly higher. He offered to provide supplemental information at the August meeting if necessary. Regarding the shuttle buses and limos, the vehicles were being leased, and they are now purchasing them.

Hearing no further discussion, Chair Sealock called for a motion regarding the contracts submitted by Lady Luck. Commissioner Allen moved to approve the contracts as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 97-110)

Chair Sealock moved to the hearing regarding Lady Luck Bettendorf relating to a violation of Iowa Code Section 99F.9 (Wagering – Age Restrictions). Mr. Ketterer advised the Commissioners that a Stipulation had been agreed upon between IRGC and Lady Luck. He noted, that on two separate occasions, a twenty year old had entered and exited the casino numerous times, was not checked for identification, and was served alcohol while on the boat. Mr. Ketterer informed the Commissioners that an administrative penalty of $25,000, which is larger than what is sometimes assessed with a first offense, had been agreed upon. Consideration was given to the number of occasions and length of time the individual was in the casino, participated in gambling and obtained alcohol beverages, and the overall number of contacts with Lady Luck employees who had an opportunity to question his age. Mr. Ketterer stated that he had visited the Lady Luck during the negotiation of the Stipulation. He stated that Lady Luck has instituted a Minor Alcohol Awareness Program (M.A.A.P.) to help all employees know when to ask for identification and prevent the serving of alcohol to underage individuals. During his visit to the boat, he noted that all employees were wearing pins and that posters had been placed throughout the facility. Mr. Ketterer stated that he was pleased with Lady Luck's activities to prevent future violations.

Mr. Ellis advised the Commissioners that Lady Luck will be participating in Project 21 in addition to their own program.

Commissioner Peyton stated that he was amazed that participation in Project 21 does not evolve prior to a violation occurring. He noted that for as many instances of underage gambling the Commission has dealt with, the participation in Project 21 usually comes up in the course of the Stipulation.

Hearing no further discussion regarding the Stipulation, Chair Sealock called for a motion. Commissioner Hansen moved to approve the Stipulation between IRGC and Lady Luck Bettendorf. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 97-111)

Chair Sealock moved to Administrative Business. There was no administrative business before the Commission.

As there was no one wishing to address the Commission, Chair Sealock called for a motion to adjourn. Commissioner Hansen so moved, and Commissioner Peyton seconded the motion.

MINUTES TAKEN BY:

Julie D. Herrick

Julie D. Herrick CPS

RACING AND GAMING COMMISSION
MINUTES
AUGUST 22, 1997

The Iowa Racing and Gaming Commission (IRGC) met on Friday, August 22, 1997 in the Rock Island Room of the Radisson Quad City Plaza, 111 East 2nd Street, Davenport, Iowa. Commission members present were Rita Sealock, Chair; Brad Peyton, Vice-Chair; and members Jackie Allen, Bill Hansen and Harold White.

Chair Sealock called the meeting to order at 8:30 A.M. and requested a motion to approve the agenda. Commissioner Hansen moved to approve the agenda. Commissioner Peyton seconded the motion, which carried unanimously.

Chair Sealock requested a motion to go into Executive Session for the purpose of receiving advice from legal counsel and DCI background investigations pursuant to Iowa Code Sections 21.5(c) and (g). Commissioner Peyton moved to go into Executive Session. Commissioner Allen seconded the motion, which carried unanimously.

Following Executive Session, Mark Lohman, General Manager of The President Riverboat, welcomed the Commission to Davenport and stated he hoped they would have an opportunity to tour the riverboat. Davenport Mayor Pro Tem Ruth Runnells also welcomed the Commission to Davenport, and expressed her hope that the Commissioners would have an opportunity to look around the city.

Mr. Lohman also introduced Mary Ellen Chamberlin, President of the Riverboat Development Authority – the non-profit license holder for The President. Ms. Chamberlin also welcomed the Commission to Davenport. She asked the Commission to review the various exhibits she had put up around the meeting room which show the various ways the funds have been used to help the community. She noted that between 1990 and 1994, $117 million of development has occurred in downtown Davenport – 12% coming directly or indirectly from riverboat dollars. This year another $5 million is being completed, with over 50% coming from riverboat dollars. Chair Sealock stated that she saw a news report in which The President was being thanked for a donation to the muscular dystrophy association.

Chair Sealock moved to the approval of the minutes from the July 24, 1997 Commission meeting. Commissioner Peyton indicated he had a correction to the minutes on Page 2, the third full paragraph, line 3: change "has any bearing on" to "was not in response to". He was noting the rule has general applicability and was not proposed just for purposes of the proposed Osceola application. Commissioner Hansen moved to approve the minutes as amended. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 97-112)

Chair Sealock called on Jack Ketterer, Administrator of IRGC, to address the rules. Mr. Ketterer noted the first set of rules is before the Commission as Notice of Intended

Action. He addressed Iowa Administrative Rule 491-13.17, Iowa Administrative Rule 419-13.18(1), which relate to occupational licenses for partnerships that own racing animals. These rules also address the transferring of shares of partial owners of racing animals. He also addressed Iowa Administrative Rule 491-20.15. Mr. Ketterer recommended the Commission address these rules separately from item 4. Chair Sealock called for a motion. Commissioner Allen moved to approve items 1, 2, and 3 under 5A – Rules, Notice of Intended Action. Commissioner Hansen seconded the motion.

Commissioner White asked Mr. Ketterer if there was some type of investigation done on occupational license holders. Mr. Ketterer advised Commissioner White that all occupational licensees are subject to background checks. Commissioner White asked if backgrounds were being performed on all partners of a partnership. Mr. Ketterer indicated backgrounds are primarily done on those partners who have in excess of 5% interest. Commissioner White asked if the changes in the partnership rules would make them conform to the rules regarding corporations who own racing animals. Mr. Ketterer noted they would. IRGC staff had noted some inconsistencies, as well as some issues that were outdated.

Hearing no further comments, Chair Sealock called for the vote. The motion carried unanimously. (See Order No. 97-113)

Chair Sealock moved to Rules – Notice of Intended Action, item 4 that would rescind Iowa Administrative Rule 20.11(6) and insert a new subrule 20.11(6) regarding the distribution of receipts. Commissioner Peyton stated this rule was proposed to carry out the legislative intent of Iowa Code Section 99F.6, subsection 4(a) which states in part: "A qualified sponsoring organization licensed to operate gambling games under this chapter shall distribute the receipts of all gambling games, less reasonable expenses, charges, taxes, fees, and deductions allowed under this chapter, as winnings to players or participants or shall distribute the receipts for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph "b"." He noted this rule is intended to clarify the procedures for distributing those receipts. Commissioner Peyton indicated the rule is self-explanatory in his opinion, but does require written criteria, which shall be made available to the public so they know the criteria used in determining the distribution of the funds. He noted this rule has been proposed in the spirit of allowing the public to have fair and equal access to the distributions. The rule also deals with some clarification of the use of the proceeds in order to make sure the distributions meet the statutory restrictions. Conflict of interest is also dealt with. Commissioner Peyton noted that most of the licensees are already in compliance with the proposed rules. The Commission is aware that most licensees have written criteria used to determine the recipients. This is an issue the Commission feels needs to be formalized and is essential to carrying out the purpose of this statute.

Hearing no further comments, Chair Sealock requested a motion. Commissioner White moved to approve the rescinding of Iowa Administrative Rule 20.11(6) and inserting the new subrule 20.11(6) regarding the distribution of receipts. Commissioner Allen seconded the motion. The motion carried unanimously. (See Order No. 97-114)

Chair Sealock called on Mr. Ketterer to address the rules under 5B – Final Adopt (Copy of Agenda & Rules attached). Mr. Ketterer advised the Commission that these rules had been before the Commission under Notice of Intended Action at the June Commission meeting. He addressed items one through 9, which deal mostly with clarifications or punctuation. The only rule with a substantial change is Iowa Administrative Rule 491-7.7 dealing with race reckless/interfered/rule off procedures that are being made so there is uniformity across the state and conforms to national policy as well. Mr. Ketterer recommended approval.

Hearing no further comments, Chair Sealock called for a motion regarding the above rules. Commissioner Peyton moved to approve the final adoption of changes to Iowa Administrative Rule 491-1.2(3), 491-2.2(2), 491-3.14(2), 491-3.14(3), 491-5.16(16), 491-7.7, 491-7.8(9), 491-10.5(1) and 491-12.8. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 97-115)

Chair Sealock then moved to the last rule under 5B – Final Adopt – Iowa Administrative Rule 491-20.10(5) concerning application criteria. Mr. Ketterer stated this rule would rescind the December filing requirement for riverboats. He noted that after the Commission adopts a rule under Notice of Intended Action, it is filed and published in the Administrative Bulletin for three consecutive weeks, which notes there is a public meeting/hearing. Mr. Ketterer noted that 10-12 individuals appeared from Osceola to express their support for this rule change. These individuals also requested that this rule change be adopted on an emergency basis so that it would assist them in being able to start construction earlier. They requested a September 10, 1997 date. Mr. Ketterer noted that the burden would be the same regardless if the rule change was effective today or September 10, 1997. Mr. Ketterer recommended that the rule be effective as of today should the Commission elect to adopt this rule on an emergency basis. He requested that a representative from Clarke County address the Commission on this issue as well.

Jim Schipper, President of the Clarke County Development Corporation, noted that the rule change would allow Osceola to come forward with a new application prior to December. He encouraged the Commission to adopt the rule under emergency procedures for the following reasons: 1) There is no opposition to the proposed rule change, and 2) They would file their application prior to the September meeting. If the rule is not enacted on an emergency basis, it would be difficult for Osceola to meet all of the requirements of the application process, particularly those regarding Department of Criminal Investigation (DCI) background checks as those could take up to 60 days. This would delay the filing of the application, and could possibly mean the Commission would not act on the application until after the first of the year.

Mr. Ketterer advised Mr. Schipper that one of the requirements for adopting a rule on an emergency basis is that it must confer a benefit on the public or remove a restriction from a segment of the public. Mr. Ketterer requested that Mr. Schipper explain to the Commission how he feels this rule change would confer a benefit on the public. Mr. Schipper stated that the benefit is based on the timing involved. The sooner that Clarke

County can submit their application and have Commission action, the sooner they will be able to begin construction and get the operation up and running. He noted that public support for the project is extremely high in the area. He stated that delaying the enactment of this rule would be detrimental and create a hardship in the area.

Chair Sealock asked Mr. Ketterer if the Commission has ever adopted a rule for any other community or developer. Mr. Ketterer stated that since May 1993, the only emergency adoption by the Commission dealt with phenylbutazone.

Chair Sealock asked if there were additional comments or questions. Commissioner Hansen moved to final adopt and emergency adopt and implement upon filing with the Administrative Rules Coordinator Administrative Rule 491-20.10(5). He noted his motion was based on the data just received by the Commission, and the fact that there was no objection to the proposed rule at the Administrative Rules hearing. Secondly, he feels this particular application, which benefits from this rule change, has been held at bay long enough and would like to see it move forward.

Commissioner Allen seconded the motion and the request by Osceola to expedite this rule change which would allow them and their new partner to take prompt action in filing a new application with the Commission. She feels the question before the Commission is why special privileges should be granted to Osceola by adopting this rule on an emergency basis. She stated that she concurred with Mr. Schipper's statement that timing is of the essence, particularly with regard to the DCI background investigations. Commissioner Allen noted that action to initiate this move was to take place at the May meeting; therefore, the application has already been delayed for 60 days. She noted that if the Commission holds any credence to the fact that part of their responsibilities are to further economic development wherever it may be in the state, support jobs, and promote tourism, then it would be prudent to grant Osceola's request and allow them to proceed without any prejudice. She stated that she would give the same consideration to any applicant in the future that might find themselves in a similar situation. Commissioner Allen noted that the Commission still faces the task of determining whether or not to approve the application.

Commissioner Peyton stated that he did not have a great deal of passion on this issue one way or the other, however is troubled by the term "emergency". He does not feel a prospective application is an emergency; nor does he feel the construction of a gaming facility in Iowa constitutes an emergency. Commissioner Peyton noted that he had a great deal of empathy for Osceola, and all they have gone through to reach this point, but feels the situation should be kept in perspective. If the rule is not adopted and implemented under emergency procedures, there is a difference of approximately 30 days, which in his opinion does not constitute an emergency. He noted that should the Commission follow through, it would be taking action in the anticipation of an application that probably will be filed, but has not as of this time. He likened the action to the Commission asking the DCI to begin background investigations on an application that has not been made. Commissioner Peyton stated that the Commission has to recognize when an application starts, and when it doesn't. He noted that Osceola has

made it very clear that they will be affected by this particular rule change. He indicated that he supported the rule change on principle, as he did not feel it was to prevent any applicant from presenting an application to the Commission at the proper time. Commissioner Peyton stated the Commission should respect the procedures under which rules are adopted, and does not see any compelling reason to adopt this rule under the emergency procedures.

Commissioner White stated that he supported the emergency adoption of this proposed rule, but for entirely different reasons than had been stated. He stated that he felt it was in the public's best interest to adopt this rule on an emergency basis as the Commission has pending, in some form, the possible revocation of Prairie Meadow's license. He feels there should not be any gap in the availability of gaming in central Iowa. Commissioner White stated that he felt it was in the public's best interest to put the Osceola application on a fast track for approval, but noted that comment did not necessarily mean he would vote for the license. He noted that if the rule is not adopted under emergency procedures, then Osceola would not be able to file their application in September, which would delay the start of the background investigations.

Mr. Farrell stated that if the Commission decided to emergency file the proposed rule change, the Commission would have to justify its action. He noted that the hearing provided some justification. If the Commission is willing to accept the burden of proving the justification, and the presumption of the rule being valid, the Commission could wait the additional 35 days and go forward in that manner.

Commissioner White stated that the Osceola contingent is apparently willing to accept the risk and are aware of the risk of adopting this rule under emergency procedures places on them. They have asked the Commission to adopt the rule on an emergency basis.

Mr. Farrell stated that he was not advocating one procedure over the other, he just wanted to make the Commission was aware of the differences between the two filing procedures.

Commissioner White stated that he had not heard Osceola withdraw their request to have the rule adopted emergency.

Commissioner Peyton asked who would have standing to challenge the proposed rule change that would place the burden on the Commission to justify the emergency adopt. Mr. Farrell stated that any member of the public could challenge a rule. He then asked if the challenge could delay the implementation of the rule, which would delay the actual application. Mr. Farrell stated that was possible, as the Commission would want the challenge heard and decided prior to considering the application.

Commissioner Hansen noted that anyone who wished to challenge the rule had an opportunity to do so at the hearing. Mr. Farrell noted it is possible there will never be a challenge to this rule, and despite the burden being on the Commission, the justification provided to the Commission for implementing this rule on an emergency basis could meet the burden. He just wanted the Commission to be aware that a challenge could

occur, and would have to overcome the burden of justifying that action. Commissioner Peyton asked for clarification on the fact that even though the Commission may ultimately prevail on the issue that the challenge itself would delay the implementation of the rule. Mr. Farrell stated that was correct.

Chair Sealock stated that she wanted to clarify several statements that had been made. She stated that she agreed with Commissioner Peyton's definition of emergency. She noted that Commissioner Hansen had stated the Osceola license had been held at bay. Chair Sealock indicated that was not an accurate statement, as she has not seen this license. This would be a new license that she intends to review on its own merits without regard to what has occurred in the past. She noted that she was troubled by the mention of "special privilege". She stated that she would rather the Commission be consistent in the treatment given to all applicants/licensees. At this time, she asked Mr. Schipper if Osceola wished to proceed with their request to have the rule emergency adopted and implemented. Mr. Shipper answered in the affirmative.

Chair Sealock asked if there were any additional comments or questions. Chair Sealock requested a roll call vote. She noted that the vote on this particular issue should not be viewed as an indication of how each individual Commissioner would ultimately vote on an application submitted by Osceola. The motion carried on a 3-2 vote, Chair Sealock and Commissioner Peyton voting nay. (See Order No. 97- 116)

Chair Sealock called on Mr. Farrell to address a contract issue between Anchor Gaming (Anchor) and the Belle of Sioux City (BSC). Mr. Farrell stated that he was asked to determine whether or not Anchor was participating in the revenue or profits of the game, and whether they were in compliance with the statutes and regulations of IRGC. He started his analysis of the situation by referring to general Iowa law which states that it is illegal to participate in a bet, accept a bet, or otherwise participate in a game unless you are covered by an exception that applies to you under another provision of Iowa law. Iowa law states that it is illegal for anyone to operate a slot machine unless you are licensed to do so. The issue then is whether Anchor is participating in the gambling game, and if so, are they covered by an exception under Iowa law. Mr. Farrell stated that Anchor owns the machines; they are not sold to any of the Iowa licensees. Anchor participates in the actual revenue of the games. In one of the contracts reviewed, Anchor received 30% of the net win from each machine. In the other contracts, Anchor received $1.50 per spin. Mr. Farrell described these machines as a slot machine on top of another slot machine on which there is a device that spins. For every 24-26 spins, Anchor would receive an amount based on the amount played. He stated that based upon the evidence, it would be possible to determine that Anchor is actually participating in the game itself. They own the devices and are participating based on the use of the devices, which would be a violation of Iowa Code Section 725.7. Mr. Farrell stated there is no exception for Anchor to operate the games as they do not have an operator's license; however, they do have a manufacturers/distributors license and have undergone a background investigation. This investigation has eliminated a number of the concerns the Commission could have had with this situation. Mr. Farrell stated that an attorney representing Anchor would be addressing the Commission. He stated that she had

advised him of a provision in Iowa law pertaining to distributors that addresses the types of contracts distributors may have with operators, including leases and purchases. This provision also allows for participatory agreements. Mr. Farrell stated that he was not aware of that provision prior to that point. He noted that the fact the statute allows participation agreements may not necessarily affect their determination on this issue as they may want to review the type of participation agreement. He further suggested they might want to review participation agreements as a whole to determine whether or not they want to continue to allow them. Other options available to the Commission are to approve all participation agreements, or review each arrangement on an individual basis to insure it is not getting in to the operation of the device. He feels there could be some concern as to who is actually operating the device on the Commission's part as licensees are entering into a number of participation agreements where a portion of the money is going back to the manufacturer/distributor or other entities.

Commissioner Peyton indicated the other provision Mr. Farrell referred to was 491-22.15(1) that deals with the approval of gambling devices. He noted that it does validate a participation agreement, but requires the agreement to be filed with the Commission in advance in triplicate and be approved by the Commission in advance. He asked if BSC had complied with these requirements.

Mr. Farrell stated that he was not aware of how the contract was filed, but noted that all of the participation agreements have been submitted for Commission approval as part of the contract process. He is not sure the licensees have followed the technical aspects of the above rule.

Commissioner Peyton suggested there might be other requirements that have to be met prior to the Commission approving a participation agreement. He is not sure the contract process is the proper procedure for approving gambling devices. He went on to state that he did not have a problem with the participation agreement as it is a way to remove the risk from the operator for this particular game. With these games, the operator has no risk of ownership or lack of performance. Commissioner Peyton noted the machines do have a great deal of proprietary value, which is whatever the market will bear. He noted that in past Commission meetings, they have been advised that the operators find this arrangement to be very lucrative, and if they didn't, he feels they would walk away from the contract and find another machine. In his opinion, the percentage of participation or amount of compensation is whatever the market will support, but the licensees have to comply with the requirements as stated above.

Mr. Farrell stated that he did not feel the amount of money paid to Anchor for the use of the machine is the issue. Anchor should be able to be paid more for the devices if those devices get such heavy use that they generate that much more income. The issue becomes how are they going to receive that money – either through a straight lease or a purchase agreement where the manufacturer/distributor is really out of the whole issue of how the machine is used.

Commissioner Peyton noted there are several ways to structure this arrangement so that it accomplishes the purpose. One way would be for Anchor to establish a set lease amount for the machines, and if that machine does not generate a certain amount of revenue, then the operator can return the machine to Anchor who would then rebate a percentage of the fee paid to them. He asked if this scenario would be legal under Iowa law.

Mr. Farrell stated he wasn't sure, but went on to note that he felt a straight lease would resolve several of the issues as Anchor would not be participating in the use of the device. After a meeting with Anchor that involved Commissioner White, Ms. Vanderloo, Mr. Hirsch and himself, it was learned that Anchor does have straight lease arrangements in those states that do not allow participatory agreements. Mr. Farrell stated that he did not know what the leases looked like, or whether they involved some type of commission that would be similar to Commissioner Peyton's example above.

Commissioner White stated that his problem with this contract had not been resolved. He stated that his interpretation of Mr. Farrell's statements was that the Commission has adopted participation agreements through the back door. He asked where it is stated in Iowa law that a participation agreement is appropriate.

Mr. Farrell stated that he does not feel the Commission has particularly looked at that issue. He indicated he was not aware of the history surrounding this particular rule, that it was adopted prior to his representing the Commission. It is his understanding that in some participation agreements or leases where a price is placed on the slot machine, and then the lease payments are on a participation-basis or the lease payment is applied toward a purchase price. He is still concerned that under a participation agreement, there could be someone who does not have a license to operate a slot machine that is collecting revenues. It is his opinion that if the Commission does not deal with participation agreements on a permanent basis, then they could still be faced with a situation with having an unlicensed entity owning the slot machine and sharing the profits as if they were in some kind of partnership. Mr. Farrell stated that he felt that was the issue before the Commission at this time. Commissioner White stated that he did not feel the Commission should adopt rules regarding a participation or lease and approve that type of arrangement without first reviewing it even if it is incorporated in the rules dealing with manufacturers/distributors. He continued that he does not feel that being licensed as a manufacturer/distributor gives an entity any greater right to share in profits or revenues than anyone else. He noted that other states have recognized that these types of arrangements could cause problems and have either banned or outlawed them. Some states require participation licenses, and during the meeting with Anchor, were advised that it is so high in one state they decided they didn't want it.

Commissioner Peyton stated that he did not have a problem with Commissioner White's comments as they relate to whether or not the Commission should approve the participation agreement between Anchor and BSC. He feels the Commission has the right, and an obligation under Iowa Administrative Rule 491-22.15, to approve the participation agreement prior to the machine being installed at which time the issues raised by Commissioner White are valid. He feels the Commission needs to determine

whether or not they are willing to accept that type of participation agreement; but in all of the previous cases, he noted the Commission has skirted the proper procedure for implementing those participation agreements. Commissioner Peyton stated that participation agreements could be legitimate under certain circumstances.

Commissioner White reiterated his belief that participation agreements are a back-door way for someone without a licensee to obtain profits from the casinos. Commissioner Peyton indicated that was an issue the Commission would need to consider in deciding whether or not to approve a participation agreement.

Ms. Chamberlin stated that one of the ways in which Iowa's law differs from other states is that the sponsoring organization actually is the holder of the gambling license; and that they can delegate, via an operating agreement with the boat, the use of that license. However, no other entity can then be authorized in another degree to provide gambling as that would constitute a second degree deferral of the license held by the sponsoring organization in which they would not share the profits. In the case of Riverboat Development Authority, the operating contract specifies they are to receive 2% of all revenues over $34 million. She asked that before the Commission takes any action to define participation agreements, that they also look at those areas defining who owns the gambling license.

Hallie Still-Caris, an attorney with the Nyemaster Law Firm in Des Moines, appeared on behalf of Anchor. She indicated that she would attempt to address some of the legal aspects of the issue that have been raised; and that Mark Hettinger, an Administrator with Anchor, would address the specific games at issue and the type of arrangement Anchor has entered into with the operator.

Ms. Still-Caris stated that Anchor is a licensed manufacturer/distributor of licensed gambling devices, and has entered into contracts with ten of the twelve Iowa operators. She indicated the other two licensees might currently be in negotiations with Anchor. She noted that the Commission has approved the contracts with all ten of the operators. The contracts do provide for a lease arrangement with compensation based on a percentage of the net win, which is the drop minus the fills, jackpots and prizes. In essence, if the machines produce revenue for the boat, Anchor gets paid; if not, then Anchor does not get paid. In her opinion, this is one of the main reasons the operators like these kinds of arrangements. Ms. Still-Caris pointed out to the Commission that the contracts contain a 30-day termination provision that either party can exercise.

Ms. Still-Caris stated that there is some concern among Commission members that this method of compensation is not authorized. She noted that she had visited with Mr. Farrell and had the opportunity to review his memorandum. It is her opinion that Mr. Farrell's analysis using Iowa Code Section 725 is not applicable to this situation. She stated that particular statute was in effect long before legalized gaming came to Iowa; that it is the general criminal statute on gambling. It is her opinion that it was not intended to prohibit the activity in this situation. She noted that Iowa Code Section 725.15 contains a provision that says that 725.7 does not apply to a game, activity, ticket or device when

lawfully possessed, used to conduct or participated in pursuant to Chapter 99B, 99E or 99F. She feels that 725.15 provides a blanket exemption for anything that is covered under Chapter 99F. Ms. Still-Caris stated that Anchor's license as a manufacturer/distributor removes it from the provisions of 725, but the Commission would still need to examine Chapter 99F to determine whether this arrangement has been approved. She noted that Anchor is not an operator which is not to say that the only way out of Chapter 725 is if you're a licensed operator, has never applied for an operator's license, nor is that a position they have ever taken. They hold title to the machine, but do not have care, custody or control of the machine. They do not dictate the operation of the device.

Commissioner Peyton stated that the Commission could construct a set of circumstances where the participation agreement could funnel gaming profits to an entity that is not permitted by law to be engaged in the operation. He noted that both Commissioner White and Mr. Farrell have indicated there could be a factual set of circumstances where someone could attempt to funnel those proceeds to someone outside the normal requirements of the law. He clarified that he is not suggesting that is occurring in this situation.

Ms. Still-Caris stated that she feels the analysis comes under Chapter 99F as opposed to Chapter 725. She concurred that the situation described by Commissioner Peyton could occur, but feels the provisions of Chapter 99F indicate that would be illegal and prohibit that type of lease. Commissioner Peyton stated that might be the appropriate consideration in determining if the participation agreement has been approved which is what Commissioner White has been asking.

Commissioner White stated that because of the restrictions contained in Chapter 99F, he was concerned about the operations being turned over to an unlicensed operator. Ms. Still-Caris stated that when she started her analysis, she looked for something within the statute that expressly prohibited the type of arrangement. She noted in the states which do not allow participatory agreements, it is because there is an expressed statutory provision. She feels if the Iowa Legislature intended to prohibit that type of arrangement, they could have done so very easily. The Legislature did so with respect to admissions revenue in Iowa Code Section 99F.7(2)(b), which states: "The applicant shall not in any manner permit a person other than the licensee to have a share, percentage or proportion of the money received for admissions to the excursion gambling boat." Ms. Still-Caris stated that the rules in Chapter 22 expressly contemplate this type of arrangement, but was not sure that Anchor has followed the procedures set out or not. She noted that the contracts have been approved under 4.28 of the regulations, which states that any contract in excess of $50,000 has to be approved by the Commission. When the Commission approves a contract, they need to consider whether gaming is free of corrupt and criminal elements, gaming related funds are directed to the lawful recipient, and whether or not gaming profits are improperly distributed. Ms. Still-Caris stated that from her understanding of the situation, the issue appears to be whether or not the profits are being improperly distributed. She does not feel profits are what are at issue. In her opinion, profits are revenues in excess of expenses. In this situation, Anchor is receiving a

percentage of the net win. Her interpretation of 4.28(1)(c) is that profits can not be distributed to someone other than those with a beneficial interest in the licensee, other than someone the Commission has approved as being entitled to receive the profits. Ms. Still-Caris noted that 4.28(3) states the Commission may deny approval of any contract which represents a distribution of profits that differs from Commission approved ownership and beneficial interest. She reiterated that this situation does not entail a distribution of profits to someone other than a beneficial interest holder. Ms. Still-Caris concluded her comments by noting that the participation agreement between Anchor and BSC constitutes a commercially reasonable transaction, the compensation represents a fair return, and the fees are related to the value that has been provided or is provided to the casino operator. She noted that in preparing her statements, she found it very beneficial to understand why these games have this type of lease arrangement versus a purchase agreement. She felt there were some special aspects to Anchor's games that warrant these types of arrangements.

Commissioner White directed Ms. Still-Caris to her comment that the participation agreement allows Anchor to bear the risk. He questioned why a partnership or joint venture has not been established in regard to these slot machines. He questioned why there was not some type of revenue-sharing arrangement. Ms. Still-Caris stated that Anchor is bearing the risk because if no one plays the machines, Anchor does not get paid. She feels that is different than looking at the total operation of the boat as a whole. Commissioner White asked why this arrangement wasn't a partnership where there would be an agreement where one partner owns the boat, furnishes the capital and machines, and then the revenues are split. Ms. Still-Caris stated it was possible to have an arrangement like that, and that possibly the Commission would not approve that arrangement for a number of reasons, but likened this situation to an individual borrowing money from a bank to buy a house. The bank owns the title to the house but does not dictate how you operate the asset that you have purchased with their money. She stated, in her opinion, that the arrangement between Anchor and the licensees is a lease arrangement. Commissioner White questioned why this arrangement considered a revenue-sharing partnership where one partner furnishes the capital and the other partner furnishes the services, and then they divide the revenue. He stated the Commission has rules stating that someone can not be a partner in a gambling license unless you have a license. To him the problem lies in the ownership of the machines and the establishment of a partnership. Commissioner White noted that it is not uncommon for someone to furnish the capital and someone to provide the services, and then determine that each is worth a certain percentage of the revenue. Ms. Still-Caris stated that she was not sure she dissuade Commissioner White in his thinking, but usually a joint venture is used when another entity is being established with the new entity having title to the assets, and the partners would make the decisions. In this case, the landlord is retaining title in the property and leasing it to another entity.

Commissioner White stated that in dealing with gambling licenses, the Commission has to err on the side of caution. If a situation appears to be something illegal, if the Commission is going to make a mistake, it should be on the side of being overcautious.

Ms. Still-Caris reiterated that Anchor is licensed as a manufacturer/distributor and has gone through fairly stringent procedures to be approved.

Commissioner Peyton asked if the Commission had approved the contract subject to a review.

Commissioner White asked Mr. Farrell if some of the problems could be avoided by calling the payments lease payments and establishing a straight lease. He also suggested the Commission could begin work on a statutory change.

Commissioner Peyton noted that the minutes from the July Commission meeting state that Commissioner White moved that agenda item 9B – Belle of Sioux City's contract with Anchor Gaming be deferred until the August 22nd meeting. He stated that he does not feel the Commission has formally approved or denied this contract. Mr. Farrell stated that the Commission gave approval that would allow the licensees to continue to operate the games without having to worry about operating illegal devices. Commissioner Hansen noted that he had made the motion at the previous month's meeting to approve the contract subject to review at a subsequent meeting.

Commissioner Peyton stated that he did not mean to keep Mr. Farrell from answering Commissioner White's question. Mr. Farrell stated he was not sure what the question was, or if he was being asked for his recommendation. Commissioner White noted that Mr. Farrell's opinion remains the same, however, under the circumstances and the rules of the Commission, a straight lease would be appropriate.

Mr. Farrell stated that he has no doubt that a straight lease or a purchase arrangement would be appropriate. He noted that at the time he wrote his memorandum to the Commission he was not aware of any authority in the Commission rules that would allow a participation agreement. Because of that fact, Mr. Farrell stated he was not going to make any recommendation to the Commission at this meeting. Mr. Farrell stated that he feels the Commission needs to decide if they want to allow participation agreements or disallow participation agreements.

Commissioner Peyton suggested that the Commission has already approved this contract in effect in compliance with 22.15(1). It is his opinion that the Commission can always revisit the issue and determine that this participation agreement is not appropriate under the law. Commissioner Peyton stated that the law clearly provides that participation agreements are permissible subject to any appropriate considerations as outlined in Section 4.28(1). He noted that unless Commissioner White believes the proceeds of the gambling operation are being diverted to an improper party, an unlicensed entity or someone the Commission did not approve of in terms of moral character, suitability or integrity, he feels the contract has been approved. He went on to state unless the Commission decides to review the participation agreement to determine whether or not there are any improprieties, it is permissible as long it does not constitute some of the situations outlined in Mr. Farrell's memorandum. Commissioner Peyton stated that he feels Mr. Farrell's memo is appropriate as there are factual situations the Commission

could envision where unsuitable parties are participating in a game, which would constitute a criminal violation of the rules.

Commissioner White asked Mr. Farrell if the fact that Anchor is a licensed manufacturer/distributor affected his analysis of the situation. Mr. Farrell stated it did not affect his analysis as set forth in his memo, but does affect the issue when reviewing the issues in 22.15 because the arrangement between the parties is line with their providing the device to the casino and receiving some kind of payment.

Commissioner White asked if the rule Mr. Farrell is citing is limited to persons or entities licensed as a manufacturer/distributor. Mr. Farrell advised that the whole chapter is limited to manufacturers and distributors.

Commissioner Peyton stated this issue comes up in the context of the manufacturer/distributor getting approval for a specific gambling device. Mr. Farrell agreed, and noted that outside of a manufacturer/distributor, 22.15 is inflexible. Commissioner White asked what authority there would be without 22.15. Mr. Farrell stated that he does not feel there is any authority outside 22.15. Commissioner Peyton stated that he felt Mr. Farrell's analysis was correct in whether or not being licensed as a manufacturer/distributor made any difference.

Commissioner White moved to approve the contract between the Belle of Sioux City and Anchor following review, and is based on 22.15 and the fact that Anchor is a licensed distributor of gambling devices in the State of Iowa, and that the participation agreement is approved. Commissioner Peyton seconded the motion.

Chair Sealock asked if there were additional comments or questions. Commissioner Peyton stated that this discussion should serve as general notice that participation agreements have to be approved by the Commission. He noted this is not a change from past procedures, just that their awareness of the agreements has been heightened.

Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-117) Chair Sealock advised those in attendance that the Commission had just acted on agenda item 9H by approving the Belle of Sioux City's contract with Anchor Games.

Chair Sealock called on Linda Vanderloo, Director of Racing/Administration for IRGC, to address the next agenda item regarding the Iowa Greyhound Association (IGA). She noted that at the July 24th Commission meeting, the Commission had approved the distribution of the 1998 Dog Promotion Fund to the IGA with four conditions. She stated that three of the conditions should be resolved later today as arbitration will take place in Des Moines beginning at 1:30 P.M. The fourth condition related to some line items in their accounting of how the funds from the previous year were spent. Primarily $1,100 for the accounting and auditing expense which seemed excessive in view of the fact that the Dog Promotion Fund was only $12,467, and telephone expenses exceeded $3,000, which raised some concern that the bill was for all activity of the IGA, not just the Dog

Promotion Fund. Based on communications between Jerry Crawford, legal counsel for IGA, and herself, she was able to convey her desire to see a general accounting of the operating expenses of the IGA, not just the Dog Promotion Fund. Mr. Crawford advised her that there was not an annual audit available, but he could provide monthly figures. Mr. Crawford also advised her that a representative of the IGA would not be at the meeting because of the negotiations that would be taking place. Ms. Vanderloo indicated that even though there is no evidence of impropriety, she does feel there are two questions that the Commission should investigate. The first would be whether or not the accounting provided is sufficient to meet the requirements of 99D.12, and if they wish to pursue an accounting or audit. If that is their desire, Ms. Vanderloo suggested the Commission may want to defer on this issue until a representative of the IGA can be present at next month's Commission meeting. The other question is whether or not the Commission is concerned about the monthly telephonic meetings and whether or not they are conducted with regard just to Dog Promotion Fund activity, or if they cover all of IGA's activities.

Commissioner White moved to defer the IGA agenda item until the September Commission meeting. Commissioner Peyton seconded the motion.

Chair Sealock asked if there were other comments or questions. Commissioner Peyton noted that Ms. Vanderloo had raised some issues that he also had some concerns about, and that IGA should be prepared to address those issues at the September meeting.

Chair Sealock called for the vote. The motion carried unanimously. (See Order No. 97-118)

Chair Sealock moved to the next agenda item – Iowa West Racing Association (IWRA)/AIM, Inc. – Review of Management Agreement, and called on Tony Payne, Executive Director of IWRA. Mr. Payne distributed finalized copies of the grants recently distributed. He noted that he had given a brief report regarding this at the July meeting, and after his report questions were raised about the management fee paid to AIM over the past two years. He responded to those questions by stating that IWRA would be prepared to answer the Commission's questions in detail on September 18, 1997 during the license renewal process. He learned last Friday that IWRA had been placed on the agenda for a review of the management agreement. He indicated that the following individuals would attempt to answer any questions the Commission might have: Scott Phelps and Barry Sevedge representing AIM, Inc., John Nelson, representing IWRA, and Chub Beno, formerly with IWRA and who was involved with the project since 1982. He noted that Sam Phelps, who is with AIM and been involved in the project since 1984, was not able to attend the meeting due to a conflict.

Mr. Payne stated that IWRA feels they have a good marriage and contract with AIM that has endured for twelve years during good time, and sometimes not so good, times. He noted that AIM has been paid very well over the last two years because of their performance and ability to capture 48% of the slot market in the Council Bluffs area and aggressively managing expenses. Mr. Payne advised the Commission that AIM had

provided $18 million in 1985 and $32 million in 1994 in venture capital, without risking any city or county funds, and also that IWRA did not have any funds at risk. He stated that IWRA has reaped benefits far exceeding those paid to AIM. He indicated IWRA would discuss those in greater detail. Mr. Payne stated that IWRA feels AIM shares IWRA's opinion that the marriage has been beneficial for both parties, but may not agree when faced with questions from advisory committees or IWRA board. Mr. Payne stated that he wrote a letter to Commissioner White on August 12th that included a chronological order of events from 1983 to the present, and that each Commissioner should have received a copy of that correspondence.

Barry Sevedge, Director of Operations for AIM at BR, advised the Commission that AIM is operating BR for IWRA under a management agreement that has been in place since 1984. He noted the management agreement has only been amended twice in that time frame due to changes in circumstances that were not anticipated originally. Under the management agreement, all management compensation is shown in one figure on the financial statement. He provided the Commission with a copy of the different formats for management compensation. He concurred with Mr. Payne's statement that the relationship has experienced good and bad times, and noted that the bad times had been used to iron out differences, consult each other and focus on their common goal. Mr. Sevedge noted the parties' original common goal was how to develop the project so that AIM received compensation commensurate with their efforts and risk but would still allow IWRA to generate profits and cash for charity. He noted that the IWRA Board saw an opportunity for the community that was not shared by a number of other people, and used their reputations to secure a licensee which was one prerequisite to develop the property. AIM provided below-market financing through the use of personal guarantees and collateral, provided the business experience for developing successful racetracks and casinos that cash-flow from the time the doors are opened, and efficient operations. Mr. Sevedge reiterated that no public funds were used in developing this project.

Mr. Sevedge noted that AIM discovered their management fees were much lower than other management companies they had talked to whose services never materialized. He noted that the contract between AIM and IWRA was consistent with other business arrangements AIM had with other companies for similar services. He noted that IWRA's foresight and AIM's financing, business concept and management had accomplished the following goals: created jobs and development in Council Bluffs, placed a racetrack in the largest market in the state, guaranteed management resources to see that the project could open and remain productive for a set period of time, protection for the community, and through rights and other contractual powers, placed ownership of the facility in local hands. Mr. Sevedge stated that the strength of the working relationship is apparent in the parties' abilities to resolve their problems over the years. He noted that purses and property taxes have changed the operation, as well as some legislative changes that introduced new competition, shrank the market and decreased revenues. He continued that through the setbacks, and even when operating at a deficit, AIM and IWRA were able to find common ground in order to maintain charitable support at the level proposed prior to the opening of the facility. The BR facility has never experienced any layoffs or downsizing. Mr. Sevedge noted that AIM and IWRA had made a long-term commitment

to each other in 1984, and again in 1995. He noted that neither side has ever felt the need to exercise their legal or contractual rights in order to resolve issues. Both sides felt they understood statutory and regulatory intent in what they were supposed to be doing, and have not had to appeal to the Commission or courts to resolve those issues. He feels that IWRA and AIM have accomplished their original goals because AIM brought the investment and expertise into the state that was not available in the Council Bluffs market in 1984, and that AIM has maximized the development of IWRA's license, have generated a good return to AIM, and have maximized taxes, jobs, money for charities and support for the greyhound industry.

Mr. Sevedge asked how AIM's management compares to the industry norm? The public has accepted AIM's business concepts very well. Their operational efficiency is measured by the earnings before interest, taxes and depreciation that are common in the casino industry. Standard guidelines are 30%, and AIM has been running between 50-60% overall since the opening of the casino. He noted that IWRA has realized the industry standard of 25-30% since opening. Mr. Sevedge noted that a market analysis prepared prior to the approval of the casino license indicated that BR should have 25-33% of the slot market, which would have equaled $56 million in 1996, and BR had $117 million. BR now has 47% of the slot market.

Mr. Sevedge moved to the issue of how well IWRA is providing funds for the State of Iowa under their statutory obligations and for the non-profit. He noted that Mr. Payne had presented some information that would provide an answer to this question.

Commissioner Peyton asked if either party could terminate the management agreement. John Nelson, President of IWRA, explained that the agreement had just been extended by 10 years with the change approved by the Commission. He did not think either party had the right to terminate the agreement. Mr. Sevedge noted that the original agreement was for ten years plus two five-year renewals. When the agreement was re-negotiated because of changes in the law, the parties elected to change the two five-year renewals to a ten-year term. Commissioner Peyton stated that the concern is that a management agreement is a management agreement and not to considered as compensation for some other consideration. He noted that IRGC statutes and rules allow management agreements as long as the Commission approves them, and the management company submits to background investigations by the DCI. The question is whether the management agreement is what it appears to be on its face, or is it some type of a disguise for something else.

Mr. Nelson noted that IWRA holds the license for all three gaming facilities in Council Bluffs. He provided some background information as to how IWRA reached an arrangement with AIM. One of the goals of IWRA was to be able to own the facility, which they do, and with the casino, BR is a $50 million facility. He went on to note that the agreement is not a profit-sharing agreement; it is a management agreement with heavy oversight by IWRA. He stated that AIM does manage the facility, but there is daily oversight by Mr. Payne and his staff, and the Board. He noted there are three different boards that deal with operational issues.

Commissioner Peyton asked Mr. Nelson, if there was no other compulsion, if he would consider this arrangement to be an arms length arrangement if IWRA were to replace AIM. What would they have to pay?
Mr. Nelson noted that IWRA is returning between 25-30% to charity from the facility. He does not feel that figure could be improved by hiring a new manager. IWRA does have that option at the end of the current contract. The contract is so long because IWRA entered into a dog racing facility, that after two years because of competition, imposition of state taxes and laws, and legislative changes, eliminated profits. He noted there have been several occasions when Nebraska contemplated legalizing gambling, which would have taken a substantial portion of BR's market. BR has competition out of Kansas and Missouri, and two riverboats were licensed in Council Bluffs, with those facilities being much larger than anticipated. Mr. Nelson stated that he felt the compensation paid to AIM was justified. He also pointed out that, under legislative rule, IWRA's taxes raise by 2% per year up to 36%. He noted that the front end of the arrangement was in IWRA's favor because all of the revenue went to pay for the facility that IWRA now owns, revenues were split after the debt on the facility was paid off. Now, IWRA receives 60% of the revenues, and AIM receives 40%. Mr. Nelson noted that BR is currently paying the highest purses in the country and likely will go higher. When that is added to the higher taxes, he stated there are concerns whether or not the track will even still be in operation at the end of the management agreement.

Commissioner Peyton stated that what he felt Mr. Nelson was saying was that the manager may seek additional compensation to justify their numbers. Mr. Nelson stated that he felt they would not, and that at some point, if all of the above factors come to pass, the facility may not even exist.

Commissioner White advised Mr. Nelson that when he was appointed to the Commission, he reviewed all of the arrangements regarding the three tracks. He questioned why the RACI Board, made up of 9 volunteers, can run a facility without spending $24 million for a management company. What do the individuals at Prairie Meadows and RACI know about running a track and slot machine facility that IWRA doesn't know? He noted that the non-profit group in Dubuque also manages the track there. The second part of his question is that the non-profit has the obligation to maximize profits for the distribution to charity, not to say they get a certain number of dollars. He asked if IWRA is satisfying its obligation to make sure that the maximum number of dollars is available for distribution to charity. Commissioner White stated that he sees the gambling law as a trade-off – the State brought gambling into the state, but at the same time, the state was promised economic development, jobs, and that the communities would benefit from the riverboats and tracks.

Commissioner White stated that when it comes to the license renewal, he recognizes that IWRA is the only entity who can hold the license. He stated that if the Commission does not approve of their actions, the license could be revoked, but not given to someone else. Secondly, regardless of any agreement between IWRA and AIM, he has some concern as to whether or not IWRA is maximizing profits for distribution to charity. He is aware of

the fact that IWRA needed AIM's expertise at one time, but those reasons no longer exist. Commissioner White indicated that he does not see any reason why IWRA needs a manager when RACI and Dubuque do not.

Commissioner White noted that based on the financial statements, the RACI and IWRA operations are somewhat comparable on slot machines earnings and revenues. He noted that if a large share of the $24 million paid to AIM could be directed to the non-profit, a lot of good could be done in the community.

Mr. Nelson advised Commissioner White that he felt the overall operation of the facility needed to be taken into account. He noted that $25 million is given annually to charity from BR; and not taking the facility into account, approximately $78 million has been given to charity from BR. Mr. Nelson stated that he was confused by the law as to who owns what and is getting what, he stated that as the license holder for two riverboats, all of the profits go to the riverboat and none to charity except for a head tax. IWRA receives $1.50 per passenger from the riverboats. Mr. Nelson stated that IWRA is pumping more money than all of the riverboat facilities in the state into charity through this arrangement. He stated that he does not know if the arrangement is illegal; that will be up to the Commission to decide. He does know that the contract was openly negotiated with lawyers and financial advisors, and was approved by the Commission. He noted that 13 surrounding counties have benefited from the funds distributed by IWRA.

Commissioner Peyton stated that he felt Commissioner White had raised some legitimate questions. He also recognized that each of the three track facilities is very different, but has to be treated equally by the Commission. He noted that there are very distinct differences between an unlicensed entity being paid a fee and a licensed entity that is licensed and regulated by the Commission, and meets the requirements of the rules. He stated that the rules do allow for a management agreement, and it is the Commission's responsibility to make sure that it complies with the rules.

Mr. Nelson expressed his frustration at the variance in operations between riverboats and racetracks. Commissioner Peyton stated that law established the differences. Mr. Nelson stated that he hoped there was a way for their current arrangement to remain in place.

Chair Sealock asked if there were additional comments or questions. Mr. Sevedge noted that one of the problems he faced in trying to explain to Commissioner White why the management fee was reasonable was that he tried to make comparisons between different arrangements around the state and other states, and only ended up becoming very confused. He contributed his confusion to the fact that each community, through their non-profit, has a separate set of priorities. In some communities, the priority is infrastructure while in others it may be to create sales and revenues, while still other communities desire resorts and convention development, and still others may strive to generate all the funds they can for charity. He noted that on one side you have the non-profit organization and on the other side, there are variable economic situations such as market and varying degrees of companies who are willing to take on the risk in those

markets. Mr. Sevedge stated that an arrangement in a smaller community that creates jobs is a totally different arrangement than for a facility that is in a protected market with sufficient jobs and wants to generate the maximum amount of cash for charity. Mr. Sevedge stated that he then went to the law to determine how it addressed the duties of the different parties. He noted that the law only addressed two or three of the elements in determining the intent of the law and applying the law to the community's needs as well as the economic realities of the market. In his opinion, the law trusted the non-profits to weigh the needs of the community, the ability of the market to support a project, and the ability of the developers to provide financing to develop the asset; thus giving the non-profit the ability to negotiate in good faith what was best for their own situation.

Mr. Sevedge advised the Commission that AIM has had racetrack license applications in Alabama, Kansas, Wisconsin, Texas, and Idaho, and have basically offered the same arrangement in each of those states they started off with at their first racetrack. After Iowa, AIM inserted ownership in the non-profit in their other racetrack license applications. He noted that in two states, the Commission did not like the concept and had AIM remove the non-profit participation clauses in order to make their application more comparable to the other entities applying for the license. Mr. Sevedge stated that AIM's arrangement under the circumstances in Council Bluffs, but also in competing with other management companies in other states, is reasonable and meets varying market conditions and needs in several jurisdictions.

Commissioner White noted that the Midwest has been criticized for having the same type of gambling found in Las Vegas and New Jersey, particularly in those instances where management agreements have resulted in a very small amount of money staying within the state. Those types of situations make him want to be sure that the citizens of Iowa are receiving the full benefit of the licenses that IWRA holds. Mr. Sevedge stated that logic applies the cookie cutter approach to a situation with many variables; that there has to be some judgement as to what will work in various situations.

Commissioner White stated that he feels IWRA and AIM have the burden to prove to the Commission why the funds paid to AIM should not be going to charity.

Mr. Sevedge raised the question about the various services provided for management and development. Those services require a license, venture capital, and expertise in the start-up of a facility as well as operational management. He stated that the financing ability and original business concept are two of the most valuable and important parts of the services provided. Mr. Sevedge noted that turning the lights on and off and locking the door are also important, especially if the facility is located in a very competitive market. He went on to state that the most important is the initial financial ability to see the project through to completion, and the right concept so that only enough is spent on a facility so that the market is able to support the facility. A concept of what the business should offer is also essential. This is not a tangible piece of property; it is something of value that has to be determined internally.

Commissioner White stated that it would be interesting for AIM to prepare a list of services it provides and submit it to RACI to determine who performs those duties in their organization.

Chair Sealock asked if there were any other comments or questions. She noted that this topic will be revisited at the September Commission meeting.

Chair Sealock reconvened the meeting at 1:45 P.M. following a lunch break. At that time, she called on Commissioners Hansen and Allen to provide the final report of the Vendor Contract Compliance Committee.

Commissioner Hansen noted that the Commission had reviewed all of the contracts over $50,000 that had been submitted for approval and found that only about 37.3% involved Iowa vendors. He noted that a twelve-page report had been presented to the Commission in April, which included 3 pages of statistical information indicating there were some significant factors that present impediments to the substantial purchase of Iowa products. Some of the problem areas involve border cities that must deal with out-of-state advertising to promote their facility, unavailable Iowa products such as gaming equipment, simulcasting fees paid to out-of-state vendors, and entertainers. Commissioner Hansen stated that the committee had not yet dealt with the problem area of entertainers. He stated that when those four factors are calculated, they only account for 5% of the total purchases by all licensees. The heart of the problem is that there is a wide variance of compliance among the licensees from 19.8% to some that purchased 97.7% from Iowa vendors. Six licensees were able to acquire more than 50% of all their goods and services from in-state and 50% who acquired their vendor services and products from out-of-state.

During meetings with the licensees, Commissioner Hansen stated the committee discovered that there is a significant amount of purchases in-state surrounding the day-to-day operations that are less than $50,000 and are not required to be approved by the Commission. He noted that a new format has been agreed upon to make the Commission aware of those purchases.

Commissioner Hansen stated the committee determined there should be more staff reviews regarding the areas involving substantial Iowa employees, compliance in the area of wages, and more periodic reviews and spot reviews of related party contracts. He noted the committee has requested that more data be submitted in regard to out-of-state and related party contracts.

Commissioner Hansen advised those in attendance that a new contract approval form had been devised and was used by the licensees in submitting their contract approval requests for this month. He noted that when submitting out-of-state or related party contracts, the licensees must now provide information as to the number of bids taken, why an Iowa vendor was not used, and the two top bids that were taken.

Commissioner Hansen advised the Commission that Bob Farinella, General Manager of Prairie Meadows Racetrack & Casino (PMR&C), would speak to the new quarterly economic impact report that the licensees will begin filing. He noted that the gaming industry has a $500-600 million impact per year on Iowa's economy, a person begins to understand the scope and dimension of the gaming industry in Iowa.

Mr. Farinella stated that the committee reviewed the procurement procedures of the licensees and the Commission's responsibility to insure that the rules pertaining to economic value for Iowa were being followed in the purchasing procedures of the licensees. Under the old process, only certain data was available, making it difficult to review that information and make further assumptions as to the economic impact of all of the licensees. Mr. Farinella noted that each licensee has contributed to the effort to tell the gaming industry's Iowa story, but also to functionalize the various purchases and expenditures of funds in order to provide a better idea of how much actually flows back into Iowa's economy.

Mr. Farinella distributed copies of the Iowa Gaming Licensees Iowa Economic Impact report for January 1, 1997 – June 30, 1997 to the Commission members. (Copy attached) He noted this was the first attempt by the licensees to breakdown their disbursements into four major categories: Payroll & Benefits, Equipment/Supplies/Services, Statutory Expenses, and Charitable Contributions. He stated the licensees are fairly certain the numbers are accurate, however, the process is still being fine-tuned. Mr. Farinella noted that as a result of compiling this information, the licensees learned that 86.2% of all their expenditures are going back to their employees or Iowa vendors, and approximately 3.4% of overall expenditures are for specialized sources. Specialized sources have been defined as those items that are not manufactured or otherwise available through an Iowa vendor, such as gaming equipment. The other category is for other supplies and services that are legitimately purchased through their procurement procedures from out-of-state vendors. Mr. Farinella stated that for every dollar expended for running all of the gaming operations, only 10%, according to these numbers, are used for out-of-state vendors. He noted that part of the problem in completing this process is that many licensees exist in an economic environment based on the state's borders, and the economic community surrounding those particular licensees does not necessarily allow all vendor supplies to be available on the Iowa side of the river. Mr. Farinella stated that as a result of this process, the Commission and licensees will not only be able to determine what the whole gaming industry is doing for Iowa, but will also allow for the acceptance of the regional variations of the individual licensees along the state's borders.

Mr. Farinella stated that the overall impact favors the state of Iowa. He noted that he was surprised by the numbers, and feels the licensees are moving in the right direction. He indicated that he felt all of the licensees were happy to be able to participate in this process, because it offers factual support of the value of the gaming industry in Iowa.

Mr. Farinella noted that in addition to the economic impact report, the committee has worked to make the system of Commission review of contracts easier and to insure that the licensees remain cognizant of using Iowa sources. He noted that some licensees have

issued public announcements listing areas in which they are having a difficult time purchasing in Iowa, and asking them to submit bids.

Commissioner Hansen commended the licensees on their "Buy Iowa" campaign that started with Harveys in Council Bluffs. He stated the level of awareness on this issue has been raised considerably, and everyone is moving in the same direction to insure there is greater compliance with Iowa vendor contracts. Another benefit is making the public aware of the tremendous economic benefit to the state of Iowa.

Commissioner Allen thanked Commissioner Hansen for his pursuit in achieving a more equitable and descriptive form for the vendor contracts submitted for Commission approval, as well as all of the time of various representatives from the licensees and IRGC staff. She noted that the industry is making a concerted effort to make sure that measures are being implemented to guarantee that vendor are staying in Iowa. Commissioner Allen stated that the committee has stopped short of defining "substantial" as it relates to funds spent in Iowa; but noted that she feels the Commission should require additional explanation, including at least one other bid, when a related party contract is involved. She feels that every effort should be made to alleviate any appearance of impropriety with regard to related parties. Commissioner Allen stated that the Commission does not want to give the appearance of micromanaging this process, but does feel there needs to be a system to provide the Commission with the kind of information that assures compliance. She feels the new form and additional information will do just that.

Chair Sealock also expressed her appreciation for everyone's efforts in this process. She feels the Commission will now have a better system, and a much more accurate view, of the economic impact on Iowa.

Commissioner Hansen moved to adopt the report dated July 23, 1997 as the report of the committee. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-119)

Chair Sealock called on Bluffs Run Casino (BRC) to present their contracts for approval. Doug Okuniewicz, Operations Manager for BRC, submitted the following contracts:

- Andersen Construction Company – Revolving Door Project
- Aristocrat, Inc. – Purchase of 10 Aristocrat Slot Machines w/Spare Parts
- Atronic Casino Technology Ltd. – Purchase of 10 Atronic Slot Machines
- NDC Check Services – System for Verification and Guarantee of Personal Checks

Commissioner White asked Mr. Okuniewicz if the above purchase of slot machines would increase the number of machines at BRC. Mr. Okuniewicz indicated it would, the number would go from 1208 to 1228. Commissioner White then asked Mr. Ketterer if the Commission has adopted any criteria regarding the ability of the racetrack casinos to increase their number of slot machines. Mr. Ketterer indicated there was not, that the

only criteria the Commission had with regard to the number of slot machines were those provided in the Pottawattamie County analysis performed prior to the riverboat licenses being granted.

Commissioner White stated that when the Legislature allowed slot machines at the racetrack facilities, it was for the purpose of developing the greyhound industry in Iowa and pay debt on the facility. He asked Mr. Ketterer if the Commission has ever considered the legislative intent and purpose of having slot machines at the tracks, and not to develop a large land-based casino associated with a racetrack. Mr. Ketterer stated that the Commission's philosophy since the legislation was enacted was that the slot machines were at the racetracks for the purpose of retiring the debt and developing the racing industry and preserving the economic development started within that industry. He stated that the Commission has not specifically addressed the number of slot machines that should be allowed at the racetracks.

Commissioner White asked Mr. Okuniewicz if the additional slot machines were needed at BRC in order to pay off debt. Mr. Okuniewicz stated the main impetus was to be able to obtain new product not currently in the casino. Commissioner White asked how much revenue from these slot machines would benefit the greyhound industry. Mr. Okuniewicz stated it would be proportionate to the other slot machines in the facility.

Commissioner White advised Mr. Ketterer that the reason he has raised this issue is because he feels the reason for slot machines at the racetracks has been lost. He noted the racetracks came first, and the Legislature allowed slot machines to support the purses and industry, not to create a large land-based casino. He indicated that he is not seriously concerned about the request for additional ten slot machines, but sees a time coming when the Commission will have to consider the legislative purpose in allowing slot machines at the racetracks.

Chair Sealock asked Mr. Okuniewicz how the profits from these additional slot machines would benefit the greyhound industry. Mr. Okuniewicz stated there would be more money available for the bottom line and the greyhounds are subsidized based on a percentage of BRC's total revenues. More revenues mean more money for the greyhounds and charity. Commissioner Peyton asked if there was a formula based on revenues, or if it was a policy. Mr. Okuniewicz stated it was a more or less a policy, but that purse supplements are negotiated on expected revenues. Commissioner White asked how much the negotiated amount would increase based on the revenue from these machines. Mr. Okuniewicz informed Commissioner White that he didn't have a figure because he didn't know how well these machines would perform. He noted the machines appear to be very popular from what he has been able to determine from other operations.

Commissioner Peyton clarified that what Mr. Okuniewicz was saying is that if the machines are successful and increase BRC's bottom line, then the benefit will flow through to the greyhounds. Commissioner Peyton asked if increased revenues would increase greyhound purses. Mr. Okuniewicz stated that he was not in a position to make that statement as he did not know how much more money would be generated by the

machines. Commissioner Peyton stated that he was not referring specifically to the new machines, but was trying to clarify that if the profits go up if that translated into larger purses. Mr. Okuniewicz indicated he didn't know as he is not involved in the purse negotiations.

Mr. Okuniewicz stated that it is possible these machines may not necessary enable BRC to make more money this year, but would allow them to stem a decline in their share of a relatively local market.

Commissioner White asked why the Commission should approve more slot machines at the racetrack. Mr. Okuniewicz indicated the machines should be approved to allow them to remain competitive and continue to increase purses. Commissioner White asked Mr. Okuniewicz to clarify what he meant by competitive. Mr. Okuniewicz stated the machines would allow BRC to remain competitive in the casino area of its operations. Commissioner White stated that he did not feel the Legislature intended for the racetrack enclosures to compete with the riverboats. The slot machines are at the racetracks to support purses, operations and the industry, but are not there to compete with the riverboats. Commissioner White noted that the Legislature allowed slot machines at the racetracks for a limited purpose. Mr. Okuniewicz stated that the riverboats have recently increased their number of slot machines by a larger amount than BRC is requesting. Commissioner White replied by indicating that was appropriate. Mr. Okuniewicz replied by clarifying that Commissioner White was stating it was appropriate for the riverboats to increase their slot machines, but that it was not appropriate for the racetracks.

Commissioner White indicated that is where the problems arise because racetracks were allowed first, then riverboat gambling was approved, which caused problems for the racetracks. To counteract the decline caused by the riverboats, the racetracks requested the ability to have slot machines to support their purses and pay off their debt; and now the racetracks want to have large casinos.

Commissioner Peyton stated that he was willing to approve BRC's four contracts with the understanding that the revenues generated by the additional slot machines will somehow benefit the greyhound industry.

Commissioner White seconded the motion. He went on to state that he would like to see a report on how these slot machines will benefit the greyhound industry and build purses, or determine if the racetrack is just trying to build a land-based casino. Mr. Okuniewicz stated there is more at stake than just the industry, although it is a very important issue. He noted that BRC pays a disproportionately larger amount to charities than riverboats, thereby providing a benefit in allowing them to increase the number of slot machines. Commissioner White replied that the reason racetracks were allowed to have slot machines was to benefit the racing industry.

Hearing no further comments regarding BRC's contracts, Chair Sealock called for the vote. The motion carried unanimously. (See Order No. 97-120)

Chair Sealock then called on Bruce Wentworth, General Manager of Dubuque Greyhound Park & Casino, who presented the following contracts for Commission approval:

- DRA/City Lease – Depreciation & Improvement Fund – Request for Approval for Improvements to Parking Lot and Addition of a Loading Dock
- Aristocrat, Inc. – Purchase of Slot Machines
- Mesirow Financial – Financial Advisor Agreement

Mr. Wentworth advised the first item did not require Commission approval, as it is part of the lease agreement between DRA and the City. DRA funds a depreciation and improvement fund for these kinds of projects. He noted that the fund has about $1,200,000 in it at this time. Mr. Wentworth estimated the parking lot would cost about $228,000 and $45,000 for the loading dock. He noted that some of the improvements are coming at this time due to the site and site considerations.

The second contract is for the purchase of twelve Aristocrat slot machines. DGP will remove 12 existing machines from the floor and install the new machines. Of the twelve removed from the floor, eight will be relocated and four will be placed in storage. The number of slot machines on the floor will increase from 547 to 555. Aristocrat has guaranteed DGP that the machines will do no less than $150 per day in win. Mr. Wentworth advised the Commission that DRA's agreement with the IGA for this year calls for 7% of after tax revenue to go toward greyhound purses. They are already paying 7 ½%. Mr. Wentworth advised the Commission that, assuming there is no corrosion from other existing games, these games would provide about $100 per day that will go to benefit the greyhounds. Commissioner White asked if any of the revenues generated by these machines would go to Dubuque. Mr. Wentworth stated that there would be some increase in the bottom line, which in turn would increase the payments to Dubuque as well. Mr. Wentworth noted that the increase in slot machines was contemplated when the operating agreement was negotiated with the Dubuque Diamond Jo (DDJ). The agreement allows for up to 600 slot machines at the track, and the Commission approved the agreement.

Mr. Wentworth advised the Commission that the third contract is for a retainer with a financial firm that will be assisting DRA with their investigation of the possible acquisition of Greater Dubuque Riverboat Entertainment Company (GDREC). Commissioner White asked if the retainer was payable regardless of events. Mr. Wentworth indicated it was. Commissioner White asked if there would be an increase if DRA were successful in purchasing GDREC. Mr. Wentworth indicated the contract called for 2% of the transaction fee.

Hearing no further comments or questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve DGP's contracts as submitted. Commissioner Hansen seconded the motion.

Commissioner Allen asked Mr. Wentworth to clarify his statement that the Aristocrat machines would generate $150 per day. She asked if DGP was going to give away $100

of that. Chair Sealock stated that she had understood Mr. Wentworth to say that the machines would generate $100 total per day for the greyhounds. Commissioner Allen stated that Mr. Wentworth had stated that the Aristocrat machines are guaranteed to generate $150 per win per day per unit. Commissioner Peyton concurred with Chair Sealock that it would be $100 aggregate.

Chair Sealock called for the vote on the motion to approve DGP's contracts. The motion carried unanimously. (See Order No. 97-121)

Chair Sealock called on Mr. Farinella of PMR&C who presented the following contracts for Commission approval:

- AVI Systems – Simulcast Equipment Replacement, Parts Repairs and Future Expenses
- Crescent Chevrolet – Give Away Vehicles
- Interspace Airport Advertising – Advertising at Des Moines International
- Des Moines Asphalt & Paving Co. – Full Depth Asphalt Patching of Main Parking Lot & Drives

Commissioner Allen asked Mr. Farinella about the contract with Des Moines Asphalt & Paving Co., noting that no additional bids or quotes were shown. Mr. Farinella advised that this asphalt company bids all of the county jobs and has consistently been the low bidder. He stated that PMR&C, as a County facility, selected them based on the lowest prices given to the County.

Commissioner Peyton asked how Mr. Farinella could state they were the low bidder if no bids were taken. Mr. Farinella stated that PMR&C works very closely with the County, and this company paved the lot originally. He stated that he has been assured the prices quoted were the same prices offered to the County.

Mr. Ketterer asked if PMR&C had any say in this matter, or if the County determined who the provider would be since it is County property. Mr. Farinella stated that he could not answer that question, but stated that he thought the procurement was being processed through their operational expenses as PMR&C, making it a PMR&C issue – not a County issue. PMR&C has chosen to use the same vendor as the County due to the large amount of work they do for the County.

Commissioner Peyton indicated that process was fine, but that PMR&C still had an obligation to comply with Commission rules regarding bids. Commissioner White asked if competing bids were required for in-state vendor. Commissioner Peyton noted they might not be required. He suggested that PMR&C show competing bids that the County may have on file.

Hearing no further comments or questions regarding the contracts submitted by PMR&C, Chair Sealock called for a motion. Commissioner Hansen moved to approve the

contracts as submitted. Commissioner White seconded the motion, which carried unanimously. (See Order No. 97-122)

Chair Sealock called on Jeff Terp, Vice President of Business Development for Ameristar Casino, who presented the following contracts for Commission approval:

- Aristocrat – 16 New Specialty Video Gaming Devices
- BFI Waste Systems – Waste Hauling for Entire Property
- Lanoha Nurseries, Inc. – Landscaping service for entire property, including mowing grass, fertilizing, replacement of trees/shrubs as necessary and weed/pest control
- Leazenby Construction – Repair Work to Dock Area; Snow Removal
- M & S Grading – Grading Work for Irrigation Project on Wetlands at Pigeon Creek
- Vicom Midwest – Service on Hitachi Phone Equipment
- Williams Gaming, Inc. – 14 New Specialty Video Gaming Devices
- Williams-Kincaid Group – Mailing/Art Shell Services

Commissioner White asked if the new machines from Aristocrat were additional machines or replacement machines. Mr. Terp indicated they were replacement machines, not expanding the number of slot machines at their facility.

Hearing no additional comments or questions, Chair Sealock requested a motion. Commissioner Hansen moved to approve the contracts as submitted. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-123)

Chair Sealock then called on Art Hill, Comptroller for Harveys Kanesville Queen, who presented the following contracts for Commission approval:

- Harveys Casino Resorts – Unsecured Promissory Note
- HCR Services Company – Management and Consulting Services for Casino and Related Operations in Council Bluffs
- IGT – 300 Slot Machines

Commissioner Allen asked Mr. Hill about the additional 300 slot machines. She noted that industry standards indicated that a certain number of gaming positions would produce a certain amount of revenue. She asked what research Harveys has undertaken to determine that gaming market in Council Bluffs can support an additional 300 slot machines, considering the other facilities available in the area.

Mr. Hill prefaced his comments by indicating that a specific decision regarding what number of machines would be replacement machines, and what would be for additional expansion has not yet been decided. He stated the reasons Harveys feels there is room for additional machines, particularly at their location, comes from observations over the past 6 months on passenger counts and gaming positions. During the six months just ended, Harveys found that their passenger count exceeded the number of gaming positions on over 30% of the days, with the situation existing for over 7 hours at a time.

Another issue in the Council Bluffs market, in comparing year over year from January 1 through August 17, Mr. Hill noted there has been no growth in table game revenues, but there has been a 5% increase in slot revenue. He noted that one of the issues to look at would be to remove table games and replace them with slot machines. The third reason is that Harveys has the lowest win per guest in the state, and feels this is attributable to the number of guests coming to the facility on Friday and Saturday who are not able to play due to a shortage of slot machines.

Commissioner Allen asked how Harveys had arrived at the number of 300 slot machines when a definitive plan has not been established. Mr. Hill stated that Harveys reviewed the area that would be vacated if they decided to remove some table games, as well as some other areas on the riverboat that have potential for expansion. He noted that remodeling in those areas would also dictate the number of machines. He stated that the maximum number of machines they would add would be 300, and that it could be less. There are a number of factors that will come into play in determining the amount of remodeling. Mr. Hill stated that Harveys used 300 slot machines because that is the maximum number of slot machines that Harveys would look at for replacements in all of the upcoming year, as well as some expansion. He stated that he felt Harveys would be adding no more than 180 machines, giving them a total of 1,084 slot machines.

Commissioner White asked when Harveys would have a more definite plan, if Harveys currently had a poker room and if they had the only poker room in Council Bluffs. Mr. Hill stated they currently had the only poker room in Council Bluffs. Commissioner White indicated his desire to see some type of definite plan before anything occurred. Mr. Hill stated that the purpose of this request was to determine if the Commission would grant approval to purchase 300 slot machines. He indicated Harveys is aware of the fact that before any type of expansion could be undertaken, it would have to be approved by the Commission. Commissioner White asked how long it takes to get a slot machine. Mr. Hill indicated there is more involved than just buying the slot machines, that there is significant construction that would have to take place that could take up to 90 days. Mr. Hill stated that before Harveys would engage in any project of this sort, they would thoroughly discuss it with IRGC staff, as well as DCI from a surveillance standpoint, to see that they were in compliance with all regulations which could also take up to 90 days.

Commissioner White noted that BR is restricted to slot machines, and that the riverboats are the only facilities that can offer table games. He indicated that before he would take any action on the 300 slot machines, he wants to know what effect that would have on the table games. Commissioner White moved to defer any consideration of Harveys request to purchase 300 additional slot machines until they can present a definite plan to the Commission, which would include the elimination of any table games if they pursue that option. Commissioner Allen seconded the motion. The motion carried unanimously. (See Order No. 97-124)

Chair Sealock then requested a motion regarding Harveys contract submissions with Harveys Casino Resorts and HCR Services Company. Commissioner Peyton moved to

approve those contracts. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 97-125)

Chair Sealock called on Lady Luck Bettendorf (Lady Luck) to present their contracts. Nancy Donovan, Acting General Manager for Lady Luck, advised the Commission that Shawn Ellis, the former General Manager of Lady Luck, had been transferred to Las Vegas to work on the acquisition of a license and development of the Lady Luck property in Vancouver, British Columbia. Ms. Donovan took a few minutes to provide some background information on herself to the Commission.

Ms. Donovan reported that the construction on Lady Luck's $39.5 million expansion project is progressing. She invited the Commission to drive down to the site to see all of the activity.

Ms. Donovan presented the following contracts for Commission approval:

- Flynn Beverage Company – Supplies Heineken and Bottled Water
- Mississippi Valley Broadcasting – TV/Cable, Radio and Print Advertising
- Oakwood Country Club – Membership to Host Player Golf Outings
- THE Rock Island Bank – Lease of two Eldorado 14-passenger Buses

She noted that three were with Iowa vendors, and one Illinois vendor.

Hearing no comments or questions regarding Lady Luck's contracts, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contracts as submitted by Lady Luck. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-126)

As the Commission took action regarding the contract submitted by the Belle of Sioux City in connection with an earlier agenda item, Chair Sealock called on the Dubuque Diamond Jo to present their contract. Doug Gross, legal counsel, indicated the request before the Commission for a proposed distribution to Greater Dubuque Riverboat Entertainment Company (GDREC) developer units was deferred at the July 24, 1997 Commission meeting. He indicated there was approximately $50,500 that could be distributed to the developer units pending the Commission's review of the status of pending litigation. Mr. Gross noted this litigation is scheduled for trial in May 1998, and that there had been some discussions between the parties but it was unlikely there would be a settlement. He indicated there is a potential claim for up to 32 of the 35 units involved in the litigation.

Mr. Ketterer recommended that the Commission not approve the distribution to the developer units. Those units are still the subject of litigation. He noted that in the Order pertaining to the suitability of William Alfredo that if it was ever determined that Mr. Alfredo was legally entitled to those units, then the Commission would take action to revoke GDREC's license. He stated that until the matter is settled a distribution to

developer units would be inappropriate. The distribution to non-developer units is a return of capital and there is no litigation issue with respect to those units.

Commissioner White, noting that the matter had been deferred at last month's meeting, asked if GDREC would prefer that the matter be deferred again pending some other possible action. Mr. Ketterer stated that he felt it would be better to clarify that the Commission would not approve distribution to developer units at this time. Mr. Gross stated that GDREC would prefer resolution of the matter as well.

Commissioner White moved to deny the proposed distribution of funds by GDREC to the developer units. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-127)

Chair Sealock moved to agenda item 10A – Racing Association of Central Iowa (RACI)/Prairie Meadows Racetrack & Casino (PMR&C), Notice of Hearing to Show Cause Why the Racing and Gaming License Should Not Be Revoked.

Commissioner Peyton noted that at the July meeting, the Commission began the procedure instituting an Order to Show Cause on the motion of the Commission why the RACI's license should not be revoked. His understanding of this agenda item is for the Commission to take the next step, and direct that notice of that hearing be given, perhaps determining a hearing date and appropriate place and time when the Commission could receive evidence. Commissioner Peyton asked Chair Sealock if she would prefer to have a motion on the table prior to any discussion or after. Chair Sealock indicated she would prefer to have a motion on the table.

Commission Peyton moved that a Notice and Order to Appear and Show Cause why the License of RACI should not be revoked, directed that Notice be given to the licensee in an appropriate manner to provide adequate time to prepare for said hearing, that the Administrator be directed to draft the Complaint and consult with legal counsel to make sure that it complies with the law, and that the hearing be set on or about the next meeting of the Commission. Commissioner White seconded the motion.

Commissioner Hansen asked if the Commission would hear from RACI regarding the Request to Expedite Contested Case Proceeding. He feels the two are intertwined. Chair Sealock concurred, and called on Tom Flynn, legal counsel for RACI.

Mr. Flynn stated that he did send the Commission a letter requesting that the matter be expedited based on the concerns of the employees at PMR&C. He noted that this matter would require the gathering of evidence, depositions and discovery and that an expedited hearing may not be appropriate. He stated that if the Commission desired to have an earlier hearing, they would comply, but have decided that is not their main concern at this time. RACI/PM feels that the more time allowed for prepatory work and possible stipulations to fact, it may be possible to eliminate a large amount of discovery and testimony, which would result in a more expedited hearing. Mr. Flynn withdrew RACI's

request for an expedited hearing unless the Commission would prefer to continue with an expedited hearing.

Commissioner Peyton asked Mr. Flynn if he felt a hearing held early during the week of September 15 would provide him sufficient time to prepare for the hearing. Commissioner Peyton indicated that he did not want to back Mr. Flynn into a corner, and if he felt he needed additional time to prepare, then the Commission should consider some type of a continuance. Mr. Flynn stated that based on his current knowledge of the situation, that would provide sufficient time to prepare. He noted that Mr. Farrell had agreed to meet with him to determine what facts could be stipulated as far as evidence and what witnesses would say.

Commissioner Hansen asked for clarification that Mr. Flynn did not have any problems with the dates of September 15-17 suggested by Commissioner Peyton. Mr. Flynn indicated that he did not.

Commissioner Hansen stated that he would like to see the earliest hearing date possible to bring this matter to a close. He noted this issue has been characterized as a three-ring circus involving RACI, Polk County, and the Commission in the middle; and they have decided that the story line would be how a white elephant is turned into a cash cow. Based on that, the greatest acts of the play have been worked out as follows: Act 1 – galloping horses; Act 2 – lame duck; and Act 3 is the sacrificial lamb. He wonders who or what is going to be sacrificed. Commissioner Hansen took a moment to reiterate some of his comments from last month's Commission meeting. This matter involves 1400 employees, destroying a $200 million economy in central Iowa, and knocking out a $57.2 million payroll. Commissioner Hansen stated that he wanted all three parties to understand that there is a time bomb ticking, and that there are only two parties who can diffuse it – RACI and the Board of Supervisors.

Commissioner Peyton stated that he feels RACI has, and always has had, the power to resolve the situation. He stated that it is past time for RACI to step to the plate and do what they feel is right, and if they do the right thing, then they would be able to sleep at night. Commissioner Peyton stated that regardless of the other entities trying to tell them how to run their business, at least they would have the knowledge that they did the right thing; that they did what they interpreted the law to be. He noted there has been a lot of confusion surrounding the issues of the matter. To his knowledge, the Commission has stated that the Operating Agreement does not need to be renegotiated; he has read that and heard it, and feels that it would be to RACI's advantage; however, he feels the current Operating Agreement can comply with Iowa law. It is just a matter of how it is put into practice. Commissioner Peyton stated that there have been some misperceptions on who gets the money. He does not feel the Commission is concerned about who gets the money, but the issue is <u>who</u> decides who gets the money and that is a matter of statute. The statute requires the licensee to make that decision. Commissioner Peyton stated that RACI is the Commission's licensee, they have the ability to solve the situation. He stated that he feels RACI has the ability within the current Operating Agreement to exercise their rights as the licensee and bring the matter to a close. He does

not feel this is a situation where RACI has to do something they are not comfortable doing; just do what they feel is right and the law requires.

Mr. Flynn, responding to Commissioner Peyton's comment that RACI has the ability to solve the problem, stated that seems difficult. He stated that RACI has the ability to make a proposal that they think is in contemplation of the law and the wishes of the Commission; however if the second party to the agreement believes the changes are not acceptable, then he is not sure how RACI can solve the problem on their own.

Commissioner Peyton stated he feels RACI has some room to do what the Commission expects and comply with the law under the structure of the current Operating Agreement. He noted that under the current Operating Agreement as he reads it, and his interpretation of the minutes and statements made when it was adopted on November 4, 1994, contemplates a change in the relationship between Polk County and RACI at the time the debt is paid off. At that time, the licensee would be entitled to make charitable contributions as required by the law. He is aware that the County has the ability to terminate the agreement three years from the date it was adopted. If the County doesn't like the way RACI is distributing those funds, that is one way to prevent RACI from doing so. However, if RACI distributes those funds to the community as anticipated by statute, Commissioner Peyton felt it would be difficult for anyone to state that RACI is not doing what they should be doing.

Chair Sealock asked Mr. Flynn if he had submitted a proposal to the Commission. Mr. Flynn noted that the Commission has RACI's final proposal to Polk County dated August 11. He stated that the County did not find it acceptable and walked out of the negotiations. He continued that it is very similar to what was presented to the Commission at their July meeting. Mr. Flynn pointed out the following changes to the Commission. In Paragraph 1 - Cancellation of 1994 Operating Agreement, RACI added a provision that they would pay the estimated $3.5 million needed in order to redeem the bonds early and remove that issue from the table. RACI also added a provision stating they would not build a hotel or convention center on the grounds. Mr. Flynn noted that provisions in the Lease paragraph were similar, but did remove the language stating that RACI would have the right of first refusal if the County sought to sell the facility. People misinterpreted that statement and felt that RACI was attempting to get a lock on buying the facility. Mr. Flynn stated that provision now states that Polk County can obtain their best offer, and RACI will have the right to match that figure. Under Payments to the County, RACI offered a fixed lease payment of $6 million, plus 20% of the net casino gaming receipts after payment of all gaming taxes and any federal or state taxes. Under this proposal, RACI offered Polk County the alternative receiving 80% of the net profits. Mr. Flynn stated this alternative was made to clarify some questions received by the RACI Board. The difference between the two proposals is that the 20% would come off the top, and the 80% would come off the bottom after all bills have been paid. Mr. Flynn stated that Polk County has indicated they would take the 20% off the top, and based on RACI's projections, that would amount to approximately $22 million per year for the next 5 years plus the $6 million in rent. RACI has made it clear that the money given to Polk County is to be used for civic and public purposes, and for direct property tax relief.

Mr. Flynn noted that several RACI Board members have received comments from individuals who felt that when PMR&C was approved that the intent was that taxes would be reduced if the operation was successful. Mr. Flynn noted that payments to charities would be in the range of $4.5 to $5 million over the next five years. The last item of the proposal deals with the Board, which has become the cornerstone of the dispute between PMR&C and Polk County. Mr. Flynn stated that RACI was anchored in their position that the Commission had made any statement that there was a need to change the Board. The RACI Board felt they were representative of the community; were the result of a posture taken by the County in 1994. At that time, the County felt the Board was representative and broad-based, accommodated their concerns over gender, race and geographic representation of the County. In an effort to compromise, RACI offered to add representatives from the Polk County Taxpayers Association and Polk County Mayoral Association as they felt those individuals would be very representative of the community. Mr. Flynn noted that one of RACI's concerns over having such a variety of associations represented, each association has their own agenda, their representative has an agenda, and would be coming to the RACI Board with their association's agenda. RACI does not have that concern with the current make-up of the board. They have a very good command of Iowa law, have a good understanding of the Commission's intent and expectations. Mr. Flynn stated that RACI is willing to change the board if the Commission feels the current board is not representative of the community.

Chair Sealock asked Mr. Flynn if RACI has any accounting of how the money given to Polk County has been used, other than the $10 million to the schools and $5 million to human services. Mr. Flynn stated that he did, but had brought it to the podium with him. He noted that some has been used for a road fund. He indicated that he would get that information to the Commission.

Commissioner Peyton stated that he didn't care who gets the money as long as they are a qualified recipient under the law, the law is followed as to who distributes those funds, and it is a decision freely made by the licensee in its discretion. He feels the Commission has gotten lost in the issue of where the money is going. He noted there are conflicts involving every licensee on how their charitable funds are distributed, for every grant allowed, another is denied. The Legislature determined that it was the licensee's responsibility to determine where their funds went, and if a licensee indicates they want to give 20% of the receipts to an entity, that is a legitimate use as long as it meets the criteria set out in the statute. Commissioner Peyton stated that charity is charitable; it is voluntary. It is not something that can be bargained for, or it is no longer charity.

Mr. Flynn stated he understood what Commissioner Peyton was saying. He indicated the only way to distinguish what he was saying from the current situation between RACI and Polk County is that the parties are starting with an Operating Agreement, which states it is in effect until November 1, 1999. Mr. Flynn noted that Commissioner Peyton does not feel a material change is required under the Operating Agreement based on his interpretation of the Agreement and comments made when the Commission approved it.

However, Polk County believes it is entitled to all of the net receipts under that Agreement.

Commissioner Peyton stated that Polk County should reread the Operating Agreement as that was not the basis it was adopted under on November 4, 1994. He noted there were conditions attached to the approval of the Operating Agreement, and those conditions were that once the debt was repaid, then the licensee would have some flexibility to determine charitable contributions. He noted there was an amendment to the Operating Agreement that stated RACI had the ability to make charitable contributions. He noted RACI had to submit those to Polk County for approval, but if Polk County used the approval process to deny RACI's ability to do what law requires, then Polk County would have a problem with the Commission. Commissioner Peyton noted that RACI may feel like they are going to have the rug pulled out from under them because Polk County may terminate the agreement, but that is the way the statute reads. He noted the public would end up being the ultimate jury as to whether or not RACI did their job and fulfilled their responsibility.

Mr. Flynn asked if it was the Commission's collective thought that if RACI voluntarily gave money to the County, is there a restriction that would prohibit the County from giving the money to third parties such as schools, or can RACI give the money to the County without any restrictions. Commissioner Peyton stated that he would rather answer the question he wants to ask: Why would anybody go the County if they knew they could make an application to RACI?

Commissioner White informed Mr. Flynn that one of the issues that concerns him is that under the law, RACI is required to distribute excess profits to charities after expenses and purses for Iowa-bred horses. When RACI gives the money to the County, the County becomes the trustee and a self-dealer. He stated that he does not want RACI to give the money to the County unless it is for a specific project; otherwise, the County will determine what percentage to keep for County purposes, and how much is distributed to other entities. This would create a conflict of interest. Commissioner White stated that he objects to RACI, a non-profit, giving the decision-making to someone whom has an inherent conflict. He views the profits as a trust to be used for the community, and the non-profit organization as the trustee of those funds. Commissioner White concurred with Commissioner Peyton's statement regarding the transfer of funds to Polk County under a negotiated arrangement except for lease payments. He envisions charitable agencies within Polk County and counties surrounding Polk County being able to make application to RACI for a portion of the charitable funds.

Commissioner Peyton noted that the Commission had adopted a rule earlier in the meeting that says exactly what Commissioner White just stated. The rule will apply to all licensees, and would have some direct application. Commissioner Peyton stated that all of the people of Polk County and those communities served by Prairie Meadows should have an equal opportunity to those distributions. He stated that RACI should develop criteria that must be met and establish rules governing conflict of interest. He also stated that the applications should set forth specific uses for the funds so that RACI can account

to the public for the distribution of charitable funds. Commissioner Peyton stated RACI has to make the determination regarding appropriate distribution of the funds, not the Commission, Polk County, or the State of Iowa.

Commissioner White stated that entities approaching Polk County for those funds are subject to doing what Polk County wants them to do with the money. RACI would be creating that problem for everyone by giving the County 20% or 80% of the money. He stated that he does not feel RACI is fulfilling their position as a trustee of charitable funds when they include a percentage of profits in their proposal to Polk County.

Commissioner Hansen reiterated that the Commission is not concerned about the destination of the funds, but has been critical of the distribution process based on the law. The law states RACI's board must do the distribution of charitable funds, and the composition of the Board is the major sticking point to reaching an agreement with the County. Commissioner Hansen noted that the public criticism of RACI's board refers to it as a horse board, but when he looks at the backgrounds of the individuals on the board, two have insurance backgrounds, two have an educational background, an author, and three businessmen. He feels this is a very diversified board that has done a good job, noting they paid off $90 million in twenty months. He suggested that Polk County and RACI use the board at DGP as a model. Their board consists of 21 people, 5 of them public officials, or 24% of the Board. Commissioner Hansen noted that Dubuque has been happy with the DGP's Board, and the Commission has never raised any questions about the Board. He noted that Polk County is not happy with appointing one-third of the members to RACI's board. Commissioner Hansen stated that he did not see how Polk County could question the competency of the present board, and why they do not understand how the law works and how it has been interpreted in a comparable racetrack situation in Iowa.

Commissioner Allen stated that after listening to all of the comments, she has a very difficult time discerning the exact cause that has brought the parties to the point arrived at today. She stated that it could be, in part, a justifiable lack of foresight many years ago by the legislators, the political protectionism in the County government, the naiveté of RACI or state officials who have given too much latitude. Whatever the basis, three or four years ago, no one ever thought RACI would be able to retire their debt in record time, nor would that have been possible without the change in the law that allowed racetracks to incorporate slot machines. Commissioner Allen stated that the issue is being looked at in the wrong way, rather than contending who decides where the money will go, Polk County officials should be rejoicing that the funds ultimately end up benefiting the residents of Polk County. She noted that the Commission has not raised this issue in order to take money away from the County. Commissioner Allen noted that when the legislation was passed, the legislators made an effort to keep the licensees from becoming political pawns. In her opinion, there is a struggle for power that goes against all that the legislators attempted to impose. She noted that the Commission is not pleased with having to come to grips with this problem. She stated that she wants Polk County residents to enjoy all the bounties that have arisen from the success of PM, but first the Commission must right a wrong and that is to bring RACI, a legitimate license holder,

into compliance with state law. This not a time to cast stones or accusations, it is a time to rectify judgmental decisions that no one ever imagined would occur. Commissioner Allen urged RACI and Polk County to join the Commission in bringing this matter to a conclusion, that it could be a win-win situation for everyone. She asked where is the common sense in this situation?

Mr. Flynn stated that RACI is prepared to continue discussions with the County, they don't want to have the contested case to have to go all the way through. He stated that he felt Polk County needed to contact RACI as they were the ones who terminated the previous discussions.

Commissioner Peyton clarified that the contested case is about the ways things are and have been, not about the way they will be in the future. The contested case hearing only pertains to the existing license, and has nothing to do with the renewal of the license. He sees negotiations surrounding how the facility will be run in the future. In his opinion, the complaint that has been made is whether or not the licensee has been the "true owner" of the facility, etc. Commissioner Peyton stated that he wanted everyone to be very clear that the renewal is a totally different matter altogether, but that the renewal will depend on the outcome of the contested case hearing.

Chair Sealock requested that the motion on the floor be read. Mr. Flynn asked if he could presume that the basis for the complaint would be based on Commissioner White's letter of July 10th. He received an affirmative answer. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-128)

Liza Ovrum, Assistant Polk County Attorney, advised the Commission that Polk County intends to intervene as an interested party in the contested case proceedings. She asked for the Commission's understanding or blessing on Polk County's intervenor status so that they could receive notices of the hearing. She noted that the Commission does not have any specific rules regarding this issue. She stated that she had spoken with Mr. Farrell during one the breaks about Polk County's intent to intervene, and that he did not object. Commissioner Peyton stated that it was not Mr. Farrell's decision, and he would not put him in that position, as it was not fair to him. He stated that the Commission has provided the County with notice of any proceedings up to this point. He stated that he preferred to leave this issue at this time as there are some legalities as to who is entitled to appear as part of the record and a number of other implications that are generated from that decision. Commissioner Peyton stated that he was not prepared to make a decision regarding Polk County's request to intervene at this time. He noted that Polk County has that legal right and should make that request to the Commission.

Mr. Farrell clarified that he did not inform Ms. Ovrum that he did not object to Polk County's request to intervene, only that she should discuss it with the Commission. He did state that Ms. Ovrum should be able to obtain a decision regarding that request prior to the September meeting.

Chair Sealock moved on the hearing regarding RACI d/b/a PMR & C and Charles H. Neal on a petition for review of Administrative Law Judge's (ALJ) Decision. Mr. Ketterer noted that Mr. Farrell and the attorney for Mr. Neal have agreed to submit their respective briefs and let the Commission make their decision based on their briefs.

Mr. Farrell advised the Commissioners that this is a $250 issue, and that the opposing attorney had a conflict and asked if the matter could be handled with the submission of briefs.

Commissioner Peyton stated that he had a question about the law, that he understood the validator is not the same as the cash box, and that there is a policy at PMR&C to treat all cash in the bill validator as if it were in the cash box. He asked if the Commission had a specific rule that prevents an employee from violating the employer's procedures.

Mr. Ketterer stated the issue in this case was that there was some concern about the contents of the cash box and bill validator being exposed. The Gaming Representatives from IRGC made a request for a change in policy, as well as the internal controls, for PMR&C so that an IRGC representative would be there. Mr. Neal proceeded even though he did contact surveillance, was aware of the change in policy, and did not contact an IRGC representative. Subsequently, when the Gaming Board made its ruling, they requested a change in internal controls.

Commissioner Peyton asked if his understanding that this case was decided based on the basis that Mr. Neal engaged in conduct that reflects negatively on the State of Iowa or acts as a detriment to the gaming industry was correct. Mr. Ketterer stated that he felt it was decided on that fact that Mr. Neal was aware of, and had knowledge of, the request for change in policy and proceeded despite his knowledge.

Commissioner White noted that Mr. Neal violated a rule or policy of PMR&C, but wondered what Commission rule he violated. Mr. Ketterer stated that Mr. Neal disobeyed a request of an IRGC Gaming Representative to have a representative there, which was made a part of PMR&C policy at IRGC's request. Commissioner White asked if the Commission was enforcing PMR&C policy. Mr. Ketterer noted that the policy was made at the request of the Commission.

Commissioner Peyton stated that the Commission has a responsibility to inform people specifically what conduct is allowed. Mr. Ketterer stated he felt the Commission had done so when they requested that IRGC representative be present when getting into the cash box. Commissioner Peyton asked if a request from a gaming representative had the same effect as a law.

Commissioner White asked if there was anything more specific this individual did. Mr. Ketterer stated that he had disregarded the request of an IRGC gaming representative. Chair Sealock noted that is a Commission rule.

Chair Sealock asked Mr. Ketterer why PMR&C was helping one of their supervisory personnel to circumvent IRGC rules.

Jack Reid, Director of Slot Operations for PMR&C, advised the Commission that he had first-hand knowledge of this situation. He stated that PMR&C was defending Mr. Neal on this charge because of the charges themselves, not the fact that he violated policy. It is PMR&C's position that it is a violation of PMR&C policy, and not the State of Iowa. PMR&C does not feel Mr. Neal has done anything to the detriment of gaming in the State of Iowa.

Chair Sealock asked Mr. Reid why PMR&C made the policy. Mr. Reid stated that PMR&C made the policy as a result of a request from the Gaming Representatives at PMR&C. He noted that the State feels the money in the cash box is very important and needs extraordinary security measures.

Commissioner White clarified that an IRGC employee requested the change, and that a PMR&C employee proceeded to violate the procedure. Commissioner White asked how that scenario constitutes a need for license action on the part of the Commission. Mr. Reid stated that was PMR&C's question.

Commissioner Peyton stated there was a commission rule that may apply, and proceeded to read Iowa Administrative Rule 491-13.10, which states: "A licensee shall be subject to denial, fine, suspension, revocation or other disciplinary measures on any of the following grounds" and Subparagraph 6 states: "Failure to comply with any order or ruling of the commission, stewards, or a racing or gaming official pertaining to a racing or gaming matter." Commissioners Peyton and White asked why this rule was not cited as the charge.

Mr. Reid stated he did not know, but the appeal was based on the charges filed as they felt no action had been taken by Mr. Neal that could be construed as detrimental to gaming in the State of Iowa.

Commissioner Peyton stated that he would have a bigger problem with Mr. Neal's conduct if the charges had been based on the above rule. He stated that he does not agree with the charges as filed, but also noted that he does not condone the fact that someone violated an order of an IRGC official.

Mr. Reid clarified that the gaming representative asked PMR&C to formulate the policy to cover this situation. There was an interim period while new internal controls were being developed; however, due to the time factor involved, there was some ambiguity built into the policy. He stated that Mr. Neal had read the policy, and understood it, but there was no intent on his part to violate it. Mr. Reid stated that it is PMR&C's contention that Mr. Neal violated a PMR&C policy, not an IRGC regulation.

Commissioner Peyton asked if the Administrative Law Judge determined the charges that were filed. Mr. Ketterer indicated that the Gaming Representatives determine the charges

filed with the Gaming Board who decides the issue. That decision can be appealed to the Administrative Law Judge.

Commissioner Peyton asked if the Commission had the latitude to substitute a difference charge, and proceeded to state that he felt the answer was no.

Ms. Vanderloo advised the Commission that part of the problem stems from the fact that the gaming public has the ability to see how easy it is for someone to get into a cash box. Commissioner Peyton stated that he understood, and that he felt the Gaming Representatives were justified in requiring the policy change, but wondered why Mr. Neal was not prosecuted under the proper charge. He feels the terms in the charges filed are too vague to be a legitimate complaint. He stated that his attitude would have been markedly different if the charge had been that Mr. Neal had failed to comply with an order or ruling of a racing or gaming official.

Commissioner White asked Mr. Ketterer what the effect was on the employee. Mr. Ketterer noted that Mr. Neal had been fined $250. There is a penalty for violating internal controls within the Commission's rules that would have been the penalty if PMR&C had not been given an opportunity to amend their internal controls and substitute policy during the interim.

Ms. Vanderloo stated that sometimes IRGC tries to give the licensees a little bit of time in order to get something in place as internal controls have to be evaluated, discuss the issues with the appropriate staff. If something can be put in place in the interim, there is some say in the issue.

Commissioner Peyton moved to reverse the ALJ's decision. Commissioner White seconded the motion. Hearing no further discussion, Chair Sealock requested a roll call vote. The motion passed on a 4-1 vote with Chair Sealock voting no. (See Order No. 97-129)

Mr. Farrell advised that this is an issue that has arisen before where there is no clear regulation. This is part of the internal controls, and internal controls are part of the law. If internal controls are violated, then regulations have been violated. He noted that the Commission's reversal does not necessarily create a problem for staff.

Chair Sealock moved on to Administrative Business. Commissioner White stated that he feels he has the right as an individual Commissioner to request an Attorney General's opinion. He noted that the section dealing with distribution of receipts incorporates 99B which identifies the types of charitable organizations that are eligible for distributions, and one of the limitations contained in 99B is that it has to be an Iowa charity. Commissioner White stated that his question to the Attorney General would be that since the legislators specified Iowa vendors, employees, and entertainers, and incorporated this provision of 99B covering bingo and raffles, did they envision that the recipients of the distributions of profits be only Iowa charities. He noted that charities in Illinois, Wisconsin and Nebraska have received distributions. Commissioner White stated that he

is not so concerned with the answer so much as to make sure the law is being followed. He requested that Mr. Farrell advise him as to whether or not it was permissible for him to request an Attorney General's opinion as a Commissioner.

As there was no public comment, Chair Sealock called for a motion to adjourn. Commissioner Peyton so moved. Commissioner Hansen seconded the motion, which carried unanimously. The meeting adjourned at 5:00 P.M.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS

BEFORE THE IOWA RACING AND GAMING COMMISSION

IN THE MATTER OF THE LICENSURE OF RACING ASSOCIATION OF CENTRAL IOWA d/b/a PRAIRIE MEADOWS RACETRACK AND CASINO.	TRANSCRIPT OF PUBLIC HEARING ON MOTION TO INTERVENE

The above-entitled Motion to Intervene came on for public hearing before the Iowa Racing and Gaming Commission at 717 East Court Avenue, commencing at 1:00 p.m., September 9, 1997.

ORIGINAL

A P P E A R A N C E S

State of Iowa by:
JEFFREY FARRELL
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RACI by:
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Polk County by:
ELIZA J. OVROM
Assistant Polk County Attorney
Suite 340
County Administration Building
Des Moines, Iowa 50309

Also present: Elizabeth Osenbaugh, Special Counsel

Reported by: Delayne M. Johnson, CSR, RPR

IOWA RACING AND GAMING COMMISSION
MINUTES
SEPTEMBER 18, 1997

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, September 18, 1997, in the Auditorium of the Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa. Commission members present were Rita Sealock, Chair; Brad Peyton, Vice Chair, and members Bill Hansen, Jacquelyne Allen, and Harold White.

Chair Sealock called the meeting to order 8:30 A.M. and called for a motion to approve the agenda. She noted that the agenda would be amended as follows: Contracts approvals would be agenda item 6; the application for renewal of license and approval of live and simulcast racing dates for 1998 for Dubuque Racing Association(DRA) and Iowa West Racing Association (IWRA) will become agenda items 7A and 7B respectively. The proposed agreement between Racing Association of Central Iowa d/b/a Prairie Meadows Racetrack and Casino (RACI/PMR&C) and Polk County will become agenda item 8A, and the application for renewal of license and approval of live and simulcast racing dates for 1998 will become agenda item 8B. The remainder of the agenda would be renumbered accordingly. Commissioner Hansen moved to approve the agenda as amended. Commissioner Allen seconded the motion, which carried unanimously.

Chair Sealock called for a motion to move into Executive Session. Commissioner Peyton moved to go into Executive Session for the purpose of receiving legal advice and DCI background investigations pursuant to Iowa Code Sections 21.5(c) and (g). Commissioner Allen seconded the motion, which carried unanimously.

Following Executive Session, Chair Sealock reiterated the amendments to the agenda that had been approved earlier. Chair Sealock called for a motion to approve the minutes or for any corrections. Commissioner Peyton noted the following correction on page 31, last paragraph, line 8, the word "has". Commissioner Peyton indicated that his statement was that the operating agreement does not need to be renegotiated, and requested that the word "has" be replaced with "does not need". Commissioner Hansen had the following corrections to the minutes: Page 21, first paragraph, 4th line, replace $5-6 million with $500-600 million; page 30, second paragraph from the bottom, a typographical error on "entertwined", should be "intertwined"; and Page 31, fourth paragraph, 3rd sentence where he characterized the three-ring circus, the Commission is in the middle, not the media. Hearing no further corrections, Chair Sealock called for a motion. Commissioner Hansen moved to approve the minutes as amended. Commissioner Peyton seconded the motion, which carried unanimously.

Chair Sealock called on Jack Ketterer, Administrator of IRGC, to address the Rules. Mr. Ketterer noted that Iowa Administrative Rule 491-13.6(6) under Notice of Intended Action is the rule that the Commission felt was vague and ambiguous, and staff is requesting that the rule be rescinded.

The following rules were before the Commission for final adoption:

- Amend Chapter 4 by adding new rules and renumbering current rules
- Iowa Administrative Rules 491-4.1 – Gaming official
- Iowa Administrative Rule 491-4.4 – Penalties
- Iowa Administrative Rule 491-20.14 – Application after denial or revocation
- Amend Iowa Administrative Rule 491-25.11(2), paragraph "b"
- Amend Chapter 25 by rescinding and reserving rules

He noted that the rules under Final Adopt are the same rules that were before the Commission two months ago. These rules relate to duties of the gaming officials and the filing of an application after a denial or revocation.

Hearing no comments regarding the rules under Notice of Intended Action or Final Adopt, Chair Sealock called for a motion. Commissioner Hansen moved to approve the rules as submitted. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-130)

Chair Sealock moved on to the report from the Iowa Greyhound Association (IGA). Jerry Crawford, legal counsel for the IGA, advised the Commission that Linda Vanderloo, Director of Administration/Racing for IRGC, had requested additional information regarding the Dog Promotion Fund. The information includes an accounting of the promotion fund for 1996-97, copies of the monthly audit report for the IGA general account, and monthly accounts for the IGA/IWRA escrow account. Mr. Crawford noted that separate accounts have now been established for each entity, previously there was just one account and the Commission was provided with an annual breakout of the receipt and use of the dog promotion funds. The escrow account was established because of previous arbitration decision. Eventually there will be three accounts: a general account for the IGA, a promotion fund account for IGA, and a joint account for the IGA/IWRA escrow account. He indicated that Ms. Vanderloo would receive monthly account reports.

Chair Sealock indicated that the new system would be much better than the previous method of reporting. She noted that Iowa Code requires the Commission to receive an accounting of how the Dog Promotion Fund money is spent.

Mr. Crawford noted several activities promoting the greyhound industry took place over the last year which were paid for by the IGA that were not listed as expenses against the dog promotion fund. He noted the IGA incurred more expense in creating the escrow account management than the entire promotion fund put together. Those expenses were paid out of the IGA's general account, not the dog promotion fund. The statute does not provide any mechanism for those expenses to be paid any other way.

Commissioner Allen indicated there was no breakdown between legal and lobbying expenses. She asked what constitutes legal expenses and lobbying expenses, and if there was backup information available. Mr. Crawford indicated the expenses are for the legal

services of the Crawford Law Firm and the lobbyist, Don Avenson. He noted there was a period of approximately 22 months when the IGA was unable to pay these expenses, and the current expenses include some catch-up fees.

Commissioner Peyton asked if a motion to approve was required for this agenda item. Mr. Ketterer advised the Commission that the distribution of the Dog Promotion Fund to IGA had already been approved with four conditions. The report from the IGA was the last condition.

Chair Sealock moved to the contract approval portion of the agenda. She called on Jeff Terp, Vice President of Business Development for Ameristar Casinos, who presented their contract with W. Keith Chilcott & Associates for legal services.

Hearing no questions regarding the contract, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contract as submitted. Commission Allen seconded the motion, which carried unanimously. (See Order No. 97-131)

Chair Sealock asked Mr. Terp if he had anything else to report. Mr. Terp advised that Ameristar had completed the cruise season as of this week. They will be submitting a report for certification. He noted that passengers have not been able to board the boat from the main deck all season, and do not anticipate that the water level will drop until November or December. Chair Sealock asked if there are any plans to alter the boat to compensate for the higher water level. Mr. Terp indicated that the boat was designed based on information received from the Army Corp of Engineers in the event of high water levels, however, that information turned out to be incorrect. The only way to compensate would be to significantly alter the boat by removing the elevator shaft, which would then put them in violation of the American Disability Act. The elevator shaft is the highest point on the boat once the stacks have been lowered.

Chair Sealock then called on Ken Bonnet, President of Mississippi Belle II (MB II). Mr. Bonnet apologized for submitting the contracts on the old contract form, and indicated he would resubmit them on the new form if the Commission so desired. Commissioner Hansen indicated that would not be necessary. Mr. Bonnet submitted the following contracts for Commission approval:

- Ivie & Associates, Inc. – Advertising Agency
- SISCO – Health Insurance and Plan Administration
- Triple "R" Tours, Ltd. – Bus Program

Hearing no comments or questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts for MB II as submitted. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 97-132)

Mr. Bonnet noted that August was the first time in 1997 that their attendance was greater than the same month last year. Their cost of living index went into effect for the non-profit so they are receiving a little more money.

Chair Sealock called on the Dubuque Diamond Jo to present their contracts. As there was no representative present at this time, Chair Sealock moved on to Miss Marquette. Jim Starr, General Manager, presented the following contracts for Commission approval:

- Schilling Paper Company – Cleaning Supplies, Paper Products
- Franklin Street Floral and Gift – Liquor Products

Hearing no comments or questions, Chair Sealock requested a motion. Commissioner Peyton moved to approve the contracts for Miss Marquette as submitted. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 97-133)

Mr. Starr advised the Commission that the Miss Marquette had a very good July and August. The best year for the Miss Marquette prior to this was in 1995, which was the first year of operation. August was the first time since 1995 that the Miss Marquette had surpassed 1995 revenue figures. Attendance figures are also up.

Chair Sealock called on Lady Luck Bettendorf, L.C. Curt Beason, legal counsel, presented the following contracts for Commission approval:

- Signature Inn – Guest Rooms and Hotel Packages
- Bay View Fish Co., Inc. – Baked Goods (Pies)

Hearing no comments or questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted by Lady Luck Bettendorf, L.C. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 97-134)

Mr. Beason noted that the Lady Luck is in the middle of building the hotel. The construction is on schedule and should be completed by Labor Day, 1998. The parking facility should be open around Thanksgiving or the first part of December.

Chair Sealock called on Verne Welch, General Manager of Harveys, who presented a contract with IGT for 300 slot machines. He distributed a handout regarding the proposed changes to the third deck. Mr. Welch noted that the three casinos in Council Bluffs generate approximately 9 million visits per year. Harveys has experienced a consistent problem of more guests than gaming positions available. Mr. Welch noted that every Saturday during the past year, the number of guests has exceeded the gaming positions in excess of 7 hours. There is an area on the third deck that has not been fully developed. The proposed plan calls for the current office space to be rearranged and move it to the aft section, maintain the poker area but move it to the opposite of the deck. Under the proposed plan, Harveys would be adding 184 slot machines. Mr. Welch noted the original request was for 300 machines, the balance of which would be used throughout the year to replace existing machines on the other decks.

Commissioner White asked what games or services were being eliminated. Mr. Welch advised him that nothing would be eliminated. Art Hill, Comptroller of Harveys, noted that they are adding more covered space that allows for the changes without eliminating anything.

Commissioner Allen noted that during the August meeting, Harveys had requested authorization to purchase 300 slot machines, but the current proposal calls for the addition of 184 slots. She asked how the additional slots would be used. Mr. Welch advised her that the other units would be used to replace units currently in operation on the boat. She asked if the machines would be stored on the boat. Mr. Welch stated that the machines would be purchased and delivered as needed throughout the year.

Chair Sealock clarified that Harveys was seeking authorization to purchase 300 slot machines, but they would not be purchasing all 300 at one time. Mr. Welch stated that was correct.

Commissioner Allen asked if any table games were being removed. Mr. Welch stated no tables games were being removed, and may find it necessary to request additional poker tables. She asked if there had been any attempt to promote the table games in light of the fact that table game revenues have decreased while slot revenue has increased. Mr. Welch noted that the marketing department is focusing on the table games, but customers currently prefer slots to table games.

Hearing no further comments or questions, Chair Sealock called for a motion. Commission Peyton moved to approve Harveys contract with IGT as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 97-135)

Mr. Welch advised the Commission that Harveys has approximately 12-13 days left to complete the required 100 days of cruising. Other than debris coming down the river, they are not experiencing any difficulty in completing their cruises, and are able to go north for about three miles.

Chair Sealock called on Bruce Wentworth, General Manager of Dubuque Greyhound Park & Casino (DGP&C), who presented their request for improvements to the kennel compound, which will be funded by the Depreciation & Improvement Fund established by the Dubuque Racing Association/City Lease. The improvements will cost $138,370.00 and be made by Conlon Construction Company.

Chair Sealock asked Mr. Wentworth if DGP&C had considered adding simulcasts from Prairie Meadows. Mr. Wentworth stated that DGP&C had tested the waters by providing the Triple Crown series, and is looking at simulcasting the Breeders Cup in November. In the past, DGP&C has simulcast the Kentucky Derby which has been fairly good for them. He noted they receive very few requests for horse simulcast signals. They do receive some requests for the bigger races.

Hearing no further comments or questions, Chair Sealock called for a motion. Commission Allen moved to approve the contract as submitted by DGP&C. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-136)

Chair Sealock called on Prairie Meadows Racetrack & Casino (PMR&C) to present their contracts. Bob Farinella, General Manager of PMR&C, presented the following contracts for Commission approval:

- A & A Custom Printing – Printing of Letterhead, Business Cards, Custom Printing
- Allied Meats, Inc. – Meat Products
- Blecker Promotions – Entertainment Negotiations
- Burns Electric – Emergency Electrical Services; Major Approved Projects
- Lawson Associates, Inc. – Addendum to Software Product License Agreement for additional modules for Payroll and Human Resources
- Macmillan Oil Company, Inc. – Gasoline, Diesel & Oil Products
- CNA – Special Risks – Long Term Disability Insurance
- Principal Healthcare of Iowa – Medical Insurance – HMO
- Wellmark Blue Cross Blue Shield – Medical & Dental Insurance
- Principal Mutual – Life Insurance, Accidental Death & Dismemberment

Commissioner Allen noted that several of the contracts showed sizeable increases from the previous year, and asked the cause of the increases. Mr. Farinella stated that from a dollar standpoint, it is a shift among vendors. If they find a vendor with a better price while going through the procurement process, they shift a portion of their buying dollars to that particular vendor. Commissioner Allen stated that she was pleased by the fact that all of the vendors were Iowa vendors.

Commissioner Allen asked if the increase with Blecker Promotions was due to the fact that the agency was going to be used more this year to relieve PMR&C's marketing staff from talent negotiations. Mr. Farinella stated that Blecker Promotions is an entertainment agency located in Des Moines, and take care of negotiating with name entertainers. Commissioner Allen asked if there would be a corresponding reduction in the marketing department. Mr. Farinella stated that the marketing department had been overloaded and was one of the reasons for the shift of talent negotiations.

Chair Sealock asked Mr. Farinella about indoor seating for patrons for the live races. Mr. Farinella indicated there were some evenings in the clubhouse when they have not had sufficient seating. He noted there had been good occupancy on the second level in the grandstand. He feels there is sufficient seating at this time for the live races, but are looking at additional seating as they work on their master plan program. Mr. Farinella stated they are watching this area very closely.

Commissioner Hansen asked Mr. Farinella about the electrical contract with Burns Electric. Mr. Farinella stated the recent electrical problems experienced by PMR&C is

the result of problems with the power supplier. He stated the electrical contract is to take care of in-house services.

Hearing no further comments or questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted by PMR&C. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 97-137)

Chair Sealock returned to the contract approvals for Dubuque Diamond Jo (DDJ). Doug Gross, legal counsel, presented the following contracts for Commission approval:

- Aon Insurance – Bumbershoot and Equipment Insurance
- Cottingham & Butler Insurance, Inc. – Hull & Machinery Insurance, Protection & Indemnity Insurance, and Workers' Comp
- Proposed Distribution of GDREC Unitholders (Non- Developer Units)

Mr. Gross noted that the insurance policies were re-negotiated with in-state companies instead of out-of-state vendors. The third item is an additional distribution to non-developer unitholders due to a strong cash position and the Commission's direction that no funds be distributed to the developer units while there is pending litigation.

Commissioner Allen asked if there was any time frame when the trial might come up regarding the developer units. Mr. Gross indicated the developer units would be in litigation until some time next year.

Hearing no further comments or questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted by DDJ. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 97-138)

Chair Sealock moved to the Application for Renewal of License and Approval of Live and Simulcast Racing Dates for 1998 for Dubuque Racing Association (DRA). Mr. Wentworth noted this was the 14th time the DRA had requested racing dates from the Commission. DRA is requesting racing dates from May 1 through October 25, 1998, with six performances per week. Evening performances will be held on Thursday, Friday and Saturday at 7:30 P.M. and afternoon performances will be on Wednesday, Saturday and Sunday at 1:00 P.M. DRA has requested special performances on Sunday evening, May 24, a Monday matinee on May 25th, a Friday matinee on July 3rd, Sunday evening September 6th, and a Monday matinee on September 7th. They wish to continue simulcasting as outlined in their application. Mr. Wentworth noted that handle had declined over the years, particularly when Wisconsin permitted pari-mutuel racing. In 1991, DRA prepaid a 20-year debt in their 7th year of operation, thereby taking the taxpayers of Dubuque off the hook. Mr. Wentworth stated that he felt DGP&C would not be operation today if the debt had not been paid. He introduced four of the 21 board members of the DRA: Norma Denlinger, who has been on the Board 14 years, Ron Cavanaugh, Treasurer; Terry Dugan, Mayor of Dubuque, and Michael Van Milligan.

Mr. Wentworth stated that DRA is committed to greyhound racing. He noted that the DRA/IGA contract is for two years, and the groups have had discussions about what will happen next year. Some of those discussions involve their stakes races. He feels the greyhound adoption program has done well this year. DGP&C recently sent a number of greyhounds to the Carolina area for adoption.

Mr. Wentworth noted there are 14 kennels at DGP&C, 10 of which are Iowa-based. Nine of those ten are based in eastern Iowa. They hope to have all 14 back for the 1998 season. Mr. Wentworth stated that when DGP&C opened in 1985, they had 20 racing kennels, reduced that to 18 in 1993, then to sixteen, and are currently at 14 which DGP&C and IGA concur is a viable number. The days of a $65-67 million handle are gone. Mr. Wentworth distributed a handout showing the total purses available each year the track has been in operation, and the average purses per kennel. (Copy attached) Mr. Wentworth noted that DGP&C has been able to return to the $65-67 million handle, and by limiting the number of kennels, have increased the average amount of purses available per kennel. Each kennel has the earned approximately $134,000 in 25 ½ weeks. In 1998, DGP&C expects each kennel will earn about $139,000 in the same time period. Mr. Wentworth noted that DGP&C has a waiting list of kennels that would like to race at DGP&C. He advised the Commission that the purses at DGP&C are twice the purses paid at Dairyland Greyhound Park in Wisconsin, which is about the same size as PMR&C. In his opinion, the greyhounds racing at DGP&C could race anywhere in the country and do quite well.

Mr. Wentworth advised there has been a positive impact on the live racing handle, although not monumental. Live racing handle is up 20% from last August, and 9.2% for season over the year. He noted that simulcast has decreased a little this year, but those dollars are showing up in live racing handle. He hopes the trend continues

Mr. Wentworth distributed a copy of a billboard which they used this year, and because of all the positive comments, have decided to use it again next year. The billboard represents approximately $125,000 of outdoor advertising.

Ms. Denlinger advised that DRA's board may have no less than 15 members and no more than 21, and traditionally keep it at 21. Out of those 21 members, five positions are reserved for governmental representatives – 3 from the City Council, 1 for the City Manager or designee, and 1 for a County Supervisor. Those positions are appointed annually. Out of the 21 board members, only four have been on the board since the beginning. She noted the board by-laws address conflict of interest issues, and state that no member can have any interest in any contract for their own personal benefit as they relate to the riverboat or racetrack.

Ms. Denlinger also addressed DRA's grant disposition process. DRA attempts to have an impact on as many organizations as possible. She stated that she feels they have a good application and a process that is easy for the applicants to follow. DRA has a grant agreement that recipients must sign, and usually try to get those organizations to try for matching funds as a way to determine how important that board feels the project or

program is for the community. DRA does not release the money until the organization has the balance of the money necessary for the project or requests a change in how the money may be used. Ms. Denlinger stated that 182 organizations met the guidelines established by DRA, and requested $4,686,000. DRA distributed $1,218,348. All organizations that submitted requests for funds received some money. Fifty-four of the organizations receiving funds were schools or school districts (26% of the available funds), 73.5% of the funds went to organizations in Dubuque, but many are countywide organizations. Seventy-seven of the organizations received full funding for their projects. The average grant was approximately $6,694.

Commissioner Hansen asked Ms. Denlinger to clarify the number of board positions reserved for public officials. Ms. Denlinger advised there were five positions. Commissioner Hansen indicated he thought one of the positions was stipulated in the by-laws. He noted those five positions are for 3 council members, city manager, and one county supervisor. Commissioner Hansen commented on how well the board was getting along at Dubuque, and noted there was only 24% representation from public officials.

Commissioner Hansen asked about the nominating process for the board. It is his understanding that the chair appoints a nominating committee, but three board members have the ability to band together and suggest additional candidates. Ms. Denlinger stated that was correct, but noted there had never been and candidates named from the floor. Commissioner Hansen stated that he understood there were no term limits. Ms. Denlinger stated that may have been correct in the beginning, but board members are elected for three years for boar directors, one year for the governmental positions, with one-third of the board rotating off every year. Board members are allowed to serve more than one term.

Commissioner Hansen noted that DRA sets aside 25% of its net receipts for charity. Ms. Denlinger noted that distributions are made to charities in Illinois and Wisconsin, and basically Dubuque County in Iowa as it is a fairly large county. He asked if there was any particular formula for determining what percentage is distributed where. Ms. Denlinger stated that no such formula exists. She noted that the guidelines indicate Dubuque County or within thirty miles of Dubuque. She went on to note there have been occasions when funds have been given to other counties other than Dubuque, but that is dictated by the applications received. Ms. Denlinger advised the Commission that DRA tries to ensure that the surrounding counties and communities know that grant funds will be available.

Commissioner Peyton clarified that DRA's application lists 25 different communities that received grants. Seventy-three or 74% of the funds supported organizations in the City of Dubuque, approximately 86% were in Dubuque County, which would indicate 13-14% of the funds were distributed outside of Dubuque County.

Commissioner White noted that DGP&C has a very large market area, but when he looks at DRA's Board membership, he only found one board member who was not from Dubuque. Ms. Denlinger advised Commissioner White there have been times when

board members have come from other counties. Commissioner White asked if the other 20 board members within the city limits of Dubuque. Ms. Denlinger advised Commissioner White that two board members live outside the city limits. Commissioner White voiced his concern as to how the charitable organizations in the surrounding counties know about the grant program when there is no representation on the board. He feels there is a built-in bias for Dubuque in the grant application process. Ms. Denlinger reviewed the listing of the grant recipients and named those recipients outside of Dubuque County for Commissioner White. Commissioner White noted that DRA distributed approximately $1.2 million to charitable organizations, $52,000 going to counties outside of Dubuque, $112,000 to Wisconsin and Illinois. Ms. Denlinger reiterated that every organization that applied for a DRA grant received some funding.

Commissioner White stated that he feels the gambling profits belong to the citizens of Iowa, not Wisconsin or Illinois. He noted that the surrounding counties support the racetrack and casino, and should receive some of the money back in the form of grants. Commissioner White suggested that the DRA should rethink the composition of their board, and increase the number of non-Dubuque County residents. Commissioner White noted that the statute calls for the board of the qualified sponsoring organization to represent the broad interests of the community. He does not interpret that to mean the type of job the board members hold.

Commissioner Peyton stated that he had a different view than Commissioner White's interpretation of the statute. He stated that he did feel it was important to try and incorporate residents from some of the other communities on the board, but feels that actions speak louder than actual numbers of people. Commissioner Peyton indicated that he was encouraged by the amount of money that was distributed outside of Dubuque. He feels a board can be representative of communities without having actually having representation on the board. If DRA was restricting all of its charitable contributions to Dubuque, then the fact that DRA's board is made up of Dubuque County residents would be a problem. Commissioner Peyton stated that he did not want to start setting quotas as to the makeup of board memberships, but agreed with Commissioner White's comment that board membership does have to representative of the communities served.

Chair Sealock asked about progress toward the legislative goal of the growing the greyhound industry in Iowa. Mr. Wentworth stated by simulcasting races the entire year rather than just during the live meet, purse money is accumulated for when the greyhounds return the next year.

Mr. Wentworth noted that the American Greyhound Track Operators Association has proposed a one evening race card with 10 races from 10 different greyhound tracks in early November. There will be a pick 8 wager with a guaranteed $1 million jackpot. This will be the greyhound industry's first major attempt to get back out in front.

Mr. Wentworth introduced Ron Cavanaugh, DRA's Treasurer, who addressed questions surrounding DRA's Reserve Fund. Chair Sealock asked what the fund is used for and if it accumulates. Mr. Cavanaugh stated that the Reserve Fund is divided into three pieces,

Capital Improvement Fund, Debt Reduction and a Reserve Fund (Rainy Day Fund). He noted this fund accumulates somewhat, but not too a large degree. The fund was established to offset any downturn in revenues and profits so DRA would not have a problem meeting their obligations relating to debt payments and maintain the facilities. Should the fund ever have an excess amount in it, the board does have the ability to prepay some debt. Mr. Cavanaugh advised the Commission there are no specific uses for the money at this time, but the Board has had some discussions about long-term planning.

Commissioner Hansen stated that he was trying to understand the overall rent system as there are several components to it. It is his understanding that 25% of the net profits goes into the Reserve Fund, and 25% to charity. The rent calls for ½ of 1% of gross as one component, and 50% of net receipts as another (approximately $2.4 million). Commissioner Hansen asked Mr. Cavanaugh if he knew what the ½ of 1% generated. Mr. Cavanaugh stated that it generated approximately $1.5 million. Commissioner Hansen asked Mr. Cavanaugh if his assumption that the $2.4 million and $1.5 million were the main rent components was correct. Mr. Cavanaugh indicated that was correct, but DRA does not consider those funds to be rent. It is viewed as an effort to support the community by providing employment for Dubuque residents as well as those in the outlying areas. Commissioner Hansen stated that he was trying to analogize Dubuque's arrangement with what has been contemplated between Racing Association of Central Iowa (RACI) and Polk County as they are the only two publicly owned tracks. He commended DRA and Dubuque for the cooperation.

Chair Sealock asked Mr. Cavanaugh what would happen with the Reserve Fund if it grew to a large sum. Mr. Cavanaugh stated DRA would more than likely elect to retire some debt in order to extend the viability of their operation in the event of a downturn in revenues. He is not sure if there will be large outlay of capital required because of the track's site.

Commissioner White asked about the purses. Mr. Wentworth told him that in 1988 there was $2 million available for purses as a result of a percentage of the handle of $65-67 million. Last year, all handle from the live meet and simulcast was under $10 million. Mr. Wentworth advised him that over $1.1 million in slot revenues was used to supplement the purses in 1996, and that figure will be higher in 1997. Commissioner White noted that any increase in purses would result in a decrease of distributions to Dubuque and Dubuque County, and asked if they were complaining about the increase in purses. Mr. Wentworth indicated they were not.

Mr. Wentworth advised the Commission that even though Dubuque was the first racetrack to retire all of its debt, it is now the last racetrack in Iowa that still has debt on the books. There is approximately $3 million of debt due to the slot casino renovations. DRA was able to retire about $300,000 of debt this year. The principal payments are about $109,000 per year.

Mr. Ketterer asked Mr. Wentworth if DGP&C had given any thought to reducing their takeout on their live meet. Mr. Wentworth indicated that he had not given it a lot of

thought. He noted that the takeout figures are listed in programs. Mr. Ketterer stated that he did not think DGP&C takeouts in the simulcast races were lower than for live meets. Mr. Ketterer stated that PMR&C had reduced their takeout to 14% for the win-place-show bet and had one of their best years. Mr. Wentworth indicated that he had not reviewed those numbers, but would do so.

Hearing no further comments or questions, Chair Sealock called for a motion. Commissioner Hansen moved to approve the renewal application and live and simulcast race dates for DRA. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-139)

Chair Sealock stated she had received a request to move the Approval of the Arbitration Decision between Iowa West Racing Association (IWRA) and Iowa Greyhound Association (IGA) to agenda item B1, and take up the renewal application second.

Chair Sealock called on Jerry Crawford, legal counsel for IGA. Mr. Crawford stated that he wanted to make three brief points regarding the approval of the Arbitration Decision. He noted there are three issues still pending with the agreement with IWRA. Those are:

1. The Arbitrator's Decision to award a fixed number of points, but from a percentage of revenues will require some agreement be reached and a joint proposal made to the Commission by the parties.

Mr. Crawford advised the Commission that Eric Wilson from BR and he would be conferring within the next day or two to determine whether or not they could reach a voluntary agreement on one or all three pending matters. Failing that, they will agree on a date with Ms. Vanderloo by which the parties would submit their separate written suggestions for the Commission's consideration to insure that the three issues are resolved in a timely manner.

2. The use of the escrow account.

3. The supplement of Iowa-bred greyhounds racing out-of-state.

Chair Sealock indicated that the Arbitration Decision was a good document. Mr. Crawford stated that he did not feel the decision mirrored the quest of either party involved in the arbitration proceedings. Chair Sealock asked if the Commission could expect to have these issues resolved by November 1st. Mr. Crawford indicated that was correct.

Hearing no further comments or questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve the Arbitrator's Decision and Award. Commissioner Hansen seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-140)

Chair Sealock moved to the renewal application of IWRA for Bluffs Run Casino (BRC) and approval of live and simulcast racing dates for 1998. Tony Payne, Executive Director of IWRA, introduced some of the IWRA directors in attendance. He noted that during the last two Commission meetings, IWRA has shared information about their grant program and management contract. IWRA has also contacted each Commissioner over the last two weeks to determine if there were additional questions and then provided those answers as time permitted.

Mr. Payne stated that IWRA feels they have a very good relationship with AIM. He noted that AIM has been paid very well the last two years because BRC has performed very well by capturing 47% of the slot machine market in the Omaha/Council Bluffs area while aggressively managing the debt at the facility. AIM risked $50 million of private venture capital with no city or county funds at risk, nor has IWRA put any funds at risk. Mr. Payne noted that IWRA has far exceeded what has been paid to AIM; they have paid off $50 million in construction, IWRA's foundation has a sizeable income, and $15,000,000 in grants have been distributed to Pottawattamie County and southwest Iowa.

Mr. Payne turned the presentation over to Barry Sevedge, Director of Operations for BRC. Mr. Sevedge noted that BRC had experienced some successes and a change in direction due to some enhancements. Their license renewal application requests to continue their current racing schedule and simulcasting. He noted BRC's live handle was down 15% this year compared to 25-40% over the last six years. When you add the import handle to the live handle, the handle wagered on greyhounds at BRC has been stable this year, and since March, the live handle on BRC races at BRC has increased about 3%. Mr. Sevedge noted these are not tremendous numbers, but are a step in the right direction. He feels BRC is starting to benefit from changes in the schedule and simulcasting. The export simulcast handle has increased approximately 73% since they started simulcasting.

Mr. Sevedge noted that due to the purse levels at BRC, there are very few greyhounds available for adoption. They have a contract with a Greyhound Pet affiliate to operate the program, and usually have between 20 – 45 adoptions per year.

Because of the arbitration decision, Mr. Sevedge stated that BRC would be No. 1 greyhound track for purses in the nation in 1998. In addition to the purses, the decision provides for approximately $2 million per year to be placed in the escrow account. He noted that the arbitration panel encouraged IWRA/BRC and IGA to establish a timetable to determine what the goals of the escrow account should be and how those funds should be spent in order to accomplish those goals. The parties hope to reach an agreement the goals and uses of the escrow funds by November 1, 1997. Mr. Sevedge stated that BRC feels the following findings of the arbitration decision are positive:

- Goal to grow the greyhound industry in Iowa to be competitive on a national level
- Establish goals and a purpose for the escrow fund, and find the means to accomplish the goals

- Changes need to be made in order to get national exposure for Iowa greyhound racing as much as possible.
- The escrow fund is not to be used for purses in the future, but is to be used as soon as possible to develop the greyhound industry in Iowa
- Broaden the base of greyhound breeders and owners in the state

Mr. Sevedge noted that the application requests a list of the improvements to the facility. He noted they are in the process of evaluating those areas that need improvements or repair.

Chair Sealock noted that growing the greyhound industry in Iowa has been goal since Day 1, but that it hasn't occurred. She asked if BRC would be putting more money into that direction. Mr. Sevedge stated that IGA and IWRA are in disagreement regarding the amount of money to be used for this purpose. He stated that BRC was frustrated because they felt they were following the guidelines of the statute, which is how to spend the money to accomplish that goal. BRC has offered opinions over the years, and especially since arbitration, but the issue has never been part of the arbitration process so the parties have not discussed the policies needed to reach that goal. Mr. Sevedge stated that BRC is encouraged by the fact that the parties will be discussing how to spend the money to accomplish specific goals. There is little disagreement between the parties regarding the level of support for purses. He stated that the money in the escrow account is not benefiting anyone. Mr. Sevedge stated that if the greyhound industry is to grow, it can only utilize so much money efficiently. Chair Sealock suggested that part of the plan include a way to monitor the escrow fund to see if it does provide a benefit.

Commissioner Peyton, noting that Mr. Sevedge stated BRC should be No.1 in purses in 1998, asked how BRC stacks up with other tracks, excluding the supplement for Iowa-bred greyhounds. Mr. Sevedge stated that the regular purses for 1997 were estimated at $3.6 million, including $2.7 million from casino supplements, $750,000 from the greyhound handle and approximately $250,000 from the horse handle. The Iowa-bred greyhounds will receive approximately $900,000 from the casino, and another $175,000 from the outs resulting in a $70 point for regular purses and $20-25 for the Iowa-breds. In addition, there is an estimated $2.4 million that was escrowed, and next year that figure will be about $2.1 million. At the end of 1998, the escrow account will have $8 million plus the investment income that has accumulated, which means the fund could be approaching $8.5-9 million. Mr. Sevedge noted that it takes between $2,000-3,000 to get a greyhound ready to race, the escrow fund would support a large number of greyhounds.

Mr. Sevedge stated that in writing the arbitration decision, the judges transferred a smaller amount of funds into the escrow account, and put more money into the regular and Iowa-bred purses, as well as increasing the percentage from 8% to 9% meaning that if the win declines as projected, there will be little effect on the purses. BRC will be spending about $8 million for regular purses, Iowa-bred supplements, and the escrow fund.

Commissioner Peyton stated that he was trying to determine if the Iowa-breds were competitive with greyhounds from other states. He asked if the Iowa industry was doing what was necessary so that Iowa-bred greyhounds could be competitive in other racing jurisdictions. Mr. Sevedge asked how you measure competition, and noted that IWRA and IGA have not been able to reach an agreement on what constitute competitive and how it would be measured. He noted since the beginning of casino supplements, the proportion of races won by Iowa-bred greyhounds and the proportion of Iowa-breds in the kennels has remained constant; the level of litters have remained fairly constant but has increased slightly within the last 2-3 months. These trends have been frustrating for IWRA as these areas are one way to measure progress and were unable to see a correlation between the money spent and the statistics.

Mr. Ketterer asked Mr. Sevedge about the number of greyhounds that would be competing and winning in Grade A races as opposed to Grade D races as stated in the Arbitration Decision. Mr. Sevedge stated the idea behind this provision was to increase the points for a Grade A Iowa-bred win, and decrease the points for a Grade D Iowa-bred win, thus rewarding the Iowa breeders that are raising greyhounds capable of competing on a Grade A level. The goal is to have evenly matched greyhounds in each race that run true to form.

Mr. Ketterer asked Mr. Sevedge if BRC still dropped the lowest kennel in bookings each year and substituted another kennel. Mr. Sevedge deferred to Eric Wilson, Director of Compliance for BRC. Mr. Wilson advised that BRC has not had a kennel change for the last three years, but are reviewing the issue at this time to determine if a kennel change would enhance competition.

Commissioner White asked Mr. Sevedge when was the last time that AIM guaranteed funds for IWRA. Mr. Sevedge indicated that was in August, 1995. Commissioner White asked if AIM had been repaid. Mr. Sevedge advised Commissioner White that revenue bonds and bank loans guaranteed by AIM, INC originally financed the facility. In the years that the facility did not cash flow, AIM advanced funds or did not collect a management fee in order to provide funds to keep the facility open. When the casino development was added, AIM guaranteed the bank loan. Even though the renovations cost more than was borrowed, since the project was strung out, the excess could be covered with operating capital. The loan was repaid within 6 months. Commissioner White asked Mr. Sevedge if IWRA currently has any debt liability to AIM. Mr. Sevedge indicated they did not.

Commissioner White reiterated his concern over the $24 million management fee AIM received in 1995 and 1996; and noted there is no management fee at either Prairie Meadows Racetrack & Casino or DGP&C. He is also stated that Iowa law requires that as much of the gambling profits as possible be retained in Iowa. Commissioner White also asked Mr. Sevedge about his salary and reimbursement for expenses outside of the $24 million management fee. Mr. Sevedge advised Commissioner White that the $375,000 mentioned in the financial statement include payroll taxes, travel, and other expenses not covered under the agreement between AIM and IWRA.

Commissioner White asked how many AIM employees are at BRC. Mr. Sevedge indicated the number has varied. When BRC first opened, AIM had two that were on site constantly. After a predictable routine was established, AIM does not maintain a constant presence. Mr. Sevedge noted that he had spent about a week at BRC during the month of September, but other months it may be as high as three or four. Commissioner White asked how much time he spent at BRC in a year. Mr. Sevedge stated that for approximately 2 ½ years he was at BRC most of the time; however, now that the operations have stabilized, he is not here near as much. In response to Commissioner White's question as to how many AIM employees reside in Council Bluffs, Mr. Sevedge stated that no AIM employees are in Council Bluffs 100% of the time. He noted there are 4-5 AIM employees who perform various duties with regard to the BRC facility. Mr. Sevedge stated that AIM has established a different company for each gaming license they hold.

Commissioner White asked Scott Phelps, Vice President of AIM, Inc., if the $375,000 and $475,000 payments in 1996 and 1997 respectively were in addition to the $24 million management fee paid to AIM in those years. Mr. Phelps advised Commissioner White that was correct. Commissioner White then asked if he was correct in assuming that the management fee was not used to pay the salaries of the management employees. Mr. Phelps indicated that was correct. He stated that the contract between AIM and IWRA makes a distinction between the services provided under the scope of the management agreement as opposed to the services or activities that are directly attributable to the property.

Commissioner White asked Mr. Sevedge what AIM has done or will do for the management fee it will receive, and if there is a projection as to the management fee in 1997. Mr. Sevedge indicated the management fee in 1997 would be approximately $15 million. Commissioner White again asked Mr. Sevedge what services AIM would provide for that fee. Mr. Sevedge, referring to an analysis, indicated the analysis assumed that AIM started over from the beginning each year, each year stands on its own, and the only services provided are those that can be identified. The services for which AIM is being compensated can not be looked at in isolation of one year because the way that the legislation for the tracks applies to the compensation that has been arranged is through a management agreement. The racetracks have not been given the flexibility for compensating for the elements of a project in a multitude of ways such as those offered in the riverboat legislation. Commissioner White asked Mr. Sevedge what he meant by that statement. Mr. Sevedge stated that the under the racetrack statute, the licensee is the non-profit organization. Commissioner White pointed out that Bluffs Run is also a racetrack enclosure with slot machines. Mr. Sevedge informed Commissioner White that the AIM's management fee is for a multitude of services over a period of years. The fee for those services over a period of years was not necessarily determinable at the time the contract was entered, nor is it determinable for a specific year. He stated that Commissioner White was correct in stating that AIM had performed specific function of overseeing the operation in 1997, but that was not all AIM has done over a 13-year period, nor does it encompass the scope of services for which AIM is compensated under the management fee.

Commissioner White noted that BRC license was issued quite some time ago, and asked if a portion of the management fee was based on the fact that there is a license at BRC. Mr. Sevedge answered in the negative. He asked Commissioner White if he was suggesting that AIM and IWRA should negotiate a contract every year. Mr. Sevedge noted that Commissioner White and he had a different interpretation of the term "management", and they each have a very different list of services.

Mr. Sevedge stated that if the argument that each year stands on its own is accepted, and a management company is compensated only for those items which can be identified in that year, then the elements of intellectual success, ideas, creating a property that is able to stand on its own, be successful and cash flow. Those are worth something, and it is impossible to determine how much it is worth prior to the facility opening. Mr. Sevedge stated that the other element that can not be ignored is the value of initial business concepts, be cognizant of market and legislative risks in one or more states, the willingess or value of making capital available in an abnormal risk situation. He stated there is a need to recognize what has to be done in a capital market to compensate for risk, attract money for development and improvements, and the value of the initial business concept. In several instances, instead of management agreements, facilities ended up with participation agreements or equity ownership.

Commissioner White pointed out that until the Legislature approved slot casinos at the pari-mutuel tracks, the racetracks were finished. He asked why AIM should get $24 million just because the Iowa Legislature approved slot machines for the racetracks. Mr. Sevedge asked Commissioner White how much it was worth when BRC didn't cash flow one year, and AIM put in $1.2 million in order to avoid laying off employees or reduce the charitable grants program. Commissioner White stated that his main point was that AIM was taking $24 million out of Iowa because the Iowa Legislature approved slot machines for the racetracks. Mr. Sevedge informed Commissioner White that they obviously had a difference of opinion. He stated that he felt Commissioner White was overlooking the risk factor, the capital investment, and does not value the intellectual, proper initial concept and setup.

Commissioner White stated that he felt that IWRA no longer needed AIM's financial guarantee. Chuck Smith, President of IWRA, stated that he felt Commissioner White was asking why IWRA signed the contract with AIM. He stated that the reason IWRA signed the contract goes back to the time that the Legislature afforded the racetracks the ability to add slot machines. At that time, IWRA was not only a non-profit organization, but were an insolvent non-profit organization in the amount of approximately $5 million. He stated that IWRA looked at other opportunities, interviewed several other entities offering various financial packages and management. IWRA board members felt the offer from AIM was the best offered. Mr. Smith stated that IWRA has been fortunate in that they have been able to provide more money for other non-profit organizations than all of the other operations in the state combined. He conceded that AIM is getting a big reward, but he was unable to find any other company that was willing to accept the risks that AIM did. Mr. Smith noted that at the time the most recent agreement was negotiated, it was uncertain whether or not Nebraska would be legalizing gambling.

John Nelson, former IWRA Board President, stated that when IWRA negotiated with AIM, one of their objectives was that IWRA would own the facility in the end. IWRA owns the facility - a $50 million investment. They could have taken more cash out for charity if they had agreed that AIM would own the facility. He concurred with Mr. Payne's statement that approximately six other companies were interviewed, and IWRA received tentative financial and management packages. He noted that based on the agreement reached with AIM, IWRA owns a $50 million facility, and has made between $75 and $80 million of charitable grants. Mr. Nelson stated that he respected Commissioner White's feeling regarding the $24 million management fee. He noted that based on projections from Arthur Anderson, BRC will eventually go out of business because of increased state taxes and the funds placed into the escrow account for greyhound supplements and purses. Mr. Nelson noted that when this agreement was brought before the Commission for approval, one of the favorable points was the fact that IWRA would own the facility in the end, and that once the facility was paid off, AIM's percentage would drop to 40%. He pointed out that had Nebraska legalized gambling, and Aksarben added casino gambling, BRC would not have survived and AIM would have lost their $32 million investment.

Mr. Smith pointed out the sunset provision in the statute requiring every county that has a riverboat or racetrack to hold a referendum in 2002 to determine whether or not gaming should continue. He noted that IWRA has exceeded the original projections, and are pleased with AIM.

Commissioner Peyton noted that distributions to charity should be annually; however, he is aware that IWRA has established an endowment fund to be distributed at a later date. He requested an explanation of why the fund was established, the benefits derived and whether or not the fund complies with statute. Mr. Nelson noted that when IWRA prepared their projections based on state law from the three Council Bluffs licensees, they realized they would either end up going out of business or have minimal profits available at the end. If IWRA had not reached an agreement with AIM, the other entities would have paid them about the same amount as Ameristar and Harveys: $3-4 million per year from each for charity. IWRA then made the assumption that amount would be available each year from their licensees, or $10-12 million that could go directly to charities, then further decided they would like to continue the practice into the future. Mr. Nelson stated there is approximately $60 million in the foundation at this time, but noted that $15-20 million is investment earnings. IWRA hired a consultant who advised IWRA that they would actually give away more money over the next ten years by building the endowment than if they did not have it, and they will have $100 million left over due to the growth of the investment fund. The amount being placed in the endowment fund is the difference between the $1.50 IWRA receives from admissions and what they are receiving from BRC until the tax absorbs it.

Mr. Nelson stated that it is very difficult to studiously give away that amount of money in one year. He noted that IWRA has approximately $24 million to be distributed in a year. Prior to IWRA charitable contributions, Council Bluffs charitable contributions probably did not exceed $1 million, and the County's may have been $1.25 million. One of the

fears with this amount of money to distribute to charitable organizations is that it will supplant present giving. The question is how to distribute these funds in order to maintain the current flow of charitable dollars. IWRA feels that their charitable funds should be used for extraordinary things that tax dollars would not normally be able to do, as well as leverage every dollar received. Mr. Nelson stated that if IWRA can identify the needs and be good custodians of the money, the money will be spent. He noted that IWRA receives 100 grant applications every six months, some of which are determined to be inappropriate. Should IWRA receive enough "appropriate" applications, no funds will be placed in the endowment fund.

Mr. Nelson advised the Commission that IWRA has a full-time staff person who travels the nine county area helping those counties and communities to establish new foundations and endowments to governed by those counties and communities on a matching basis. They also have a full-time education officer to deal with education grants. IWRA recently appointed two new committees: Recreation and City Improvement and Beautification with 10-12 citizens per committee who represent the entire area, not just Council Bluffs. These committees are working on project independent of the grant requests. They are attempting to generate new and spontaneous ideas. IWRA would like to help fund an indoor ice center, indoor waterpark, indoor general recreation center, and a community arts center for plays, musical festivals, etc.

Commissioner Peyton indicated that he was not being critical, but is a fan of the way IWRA has conducted their grant program and reached out to nine different counties, with a substantial amount of grants being given outside of Pottawattamie County. He noted there is an issue as to whether all of the funds should be distributed annually, but that it is also arguable that the endowment fund is OK as well. Mr. Nelson agreed with Commissioner Peyton, and advised him that IWRA was willing appear as often as the Commission would like. He stated that the Commissioners are welcome to visit their offices to view the processes used by IWRA in making their grants, scholarships, etc. in order to assure them IWRA is doing everything possible to distribute the money.

Mr. Nelson pointed out that some of the grants have gone to an Omaha organization due to the fact many of the charities are integrated between Omaha and Council Bluffs. He noted that IWRA had recently given a $50,000 grant to the Omaha Boys and Girls Club for building a new facility in Carter Lake, Iowa.

Commissioner White asked how much money has gone into the Omaha Foundation. Mr. Nelson explained that this situation has come about because of an IRS taxation issue. IWRA is technically a private foundation, and as such are required to pay an excise tax by law, and can not give property other than money to a foundation. IWRA established the Southwest Iowa Foundation (SWIF), a private foundation, and gifted them an economic interest in part of the property. SWIF then affiliated as a supporting organization to the Omaha Community Foundation. By doing so, IWRA could deduct the value of the property placed in SWIF, which they immediately leased back to IWRA for the facility. IWRA pays rent to SWIF from which the funds are derived to establish the foundations in the surrounding nine counties and other projects.

Mr. Nelson explained that IWRA received so much money so fast that they had approximately $25-30 million. Those funds were invested in the facility; however, the IRS informed them they had to give that money to charity, which created a shortfall. With the help of a consultant, IWRA gifted the facility to SWIF, which affiliated with the Omaha Community Foundation. This action enabled SWIF to deduct the value of the property from the IRS liability on $30 million, or about $9 million dollars, which could then be used for charitable purposes. Mr. Nelson stated that the Omaha Community Foundation receives no money other than monthly fees, but it does not exercise any control over IWRA or SWIF. Commissioner Peyton noted that this scenario had been explained to the Commission within the last several months.

Commissioner White reiterated his belief that it is the licensees' obligation to retain a maximum amount of funds in Iowa for charities. He suggested that at some point, IWRA should review the steps necessary to terminate their agreement with AIM, freeing up additional funds for Iowa charities. Mr. Nelson stated that IWRA would take the matter under advisement.

Commissioner Allen asked for clarification of the corporate structure as it relates to the various foundations. Mr. Nelson advised her that the Omaha Community Foundation is a public foundation of which SWIF is a supporting organization. This allows IWRA to eliminate the excise tax on the foundation, making it possible to give real and personal property to a foundation and take it as a tax deduction. Commissioner Allen stated that she has never been comfortable with this configuration. Mr. Nelson explained that the community foundations encourage private gifting. They normally work with wealthy individuals who form foundations. By affiliating with the community foundation, the supporting organizations save money on taxes, thus allowing those foundations to distribute the proceeds to the constituency in their area. He reiterated that the Omaha Community Foundation does not have any impact on IWRA or impede them from distributing the funds in the manner they choose. He noted that the office for SWIF is in Council Bluffs, its employees are in Council Bluffs, and the money is being distributed throughout western Iowa. Mr. Nelson stated that SWIF does pay a monthly fee to the Omaha Community Foundation for the benefit of the tax umbrella, but it is the same fees that every other foundation pays and are minimal compared to the tax savings.

Commissioner Peyton moved to approve the application for license and racing dates for IWRA. Commissioner Hansen seconded the motion. Hearing no additional comments or questions, Chair Sealock requested a roll call vote. The motion carried on a 4-1 vote, Commissioner White voting in the negative. (See Order No. 97- 141)

Following a lunch break, the Commission addressed the proposed agreement between Racing Association of Central Iowa (RACI) and Polk County. Tom Flynn, legal counsel for RACI, distributed copies to Commission members. He noted that the proposal had been adopted on an 8-0 vote by RACI's Board of Directors on September 11, 1997, at which time it was forwarded to the Polk County Board of Supervisors. The Board of Supervisors accepted the proposal on a 3-2 vote on September 12, 1997. He expressed RACI's hope that the Commission would find the proposal acceptable. Mr. Flynn noted

that while RACI's Board was drafting the proposal, they were mindful of the concerns expressed by the Commission as evidenced in the Order to Show Cause. RACI has attempted to address and resolve the various concerns. Mr. Flynn addressed some of the key provisions of the proposed agreement as follows:

- Paragraph 1A provides for the termination of the Operating Agreement as of midnight on December 31, 1997. Paragraph 2A talks about replacing the Operating Agreement with a five-year lease beginning January 1, 1998, ending December 31, 2002.

- Paragraph 1D talks about eliminating the outstanding bonds by whatever process is deem necessary. He noted that bond considerations have played a major factor in many of the provisions appearing in the Operating Agreement. It is RACI's belief that the bonds have also been a factor in causing some of the problems that the Commission and RACI have been presented with.

- Paragraph 1F discusses a Bill of Sale that the County would execute and place into escrow until such time as the gaming revenue bonds have been retired in the first half of 1998. At that time, the Bill of Sale will come out of escrow, and RACI would have title to the slot machines and related gaming equipment without any further charges or expenses. Additionally, Paragraphs 1E and 1G state that all other personal property will be quieted in RACI. When this agreement is fully implemented, RACI will hold title to all of the personal property – everything except the real estate. RACI felt this addressed a concern repeatedly expressed by the Commission. Mr. Flynn advised the Commission that the Board of Supervisors passed a resolution at their meeting on Tuesday implementing this provision.

- Paragraph 1H goes hand in hand with the termination of the Operating Agreement as it states that the County's approval process over all purse contracts, key employee contracts, annual operating plan, and budgets will no longer be in place. Currently, RACI sends monthly reports to the County under the terms of the Operating Agreement. Polk County would still have access to these reports under the Open Records Law.

- Paragraph 2B addresses the pre-approval of the Board of Supervisors of major leasehold improvements that RACI has requested to the facility. Mr. Flynn noted that it was a major concession on the part of the Board of Supervisors to pre-approve these matters, and a motivating factor for RACI to accept this proposal. With the Supervisor's pre-approval of the five-year improvement plan, work can begin immediately.

- Paragraph 3A provides for a fixed lease payment to Polk County of $12 million per year in equal monthly installments. Mr. Flynn noted that previous proposals contained provisions for $6 million rent, plus 20% of the net gaming receipts after taxes. The Commission questioned why the County was entitled to receive a guaranteed 20% off the top even though they are a qualified beneficiary. The County did not dwell on a lease payment amount in previous proposals, however, it became

more of an issue after learning that the Commission took exception to the guaranteed 20% off the top. From RACI's standpoint, the rent discussions centered on what it was worth to RACI to have the existing facilities available to them. Mr. Flynn noted that RACI had passed a resolution in July to look at other sites if they could not reach an agreement with Polk County. RACI determined that it would cost approximately $75 – 100 million to build a new facility. Taking several issues into consideration, RACI felt $12 million was a fair and reasonable rent.

- Paragraph 3B provides for additional money to be distributed to Polk County, but only in accordance with Section 99F.6(4a) and 99B.7(3b) of the Iowa Code. Polk County will be treated as a qualified beneficiary and will receive additional funds after RACI has paid all of their operating expenses, including purses and major leasehold improvements. RACI has agreed to commit to Polk County the first portion of the net receipts based on their five-year projections. It is their opinion they will have approximately $100 million available after doing the projects they want to do. Polk County would receive the first $75 million with the remaining funds distributed to qualified beneficiaries and charities. The net receipts would be distributed to the County as follows: 15% at the end of the first calendar quarter, 20% at the end of second calendar quarter, 30% at the end of the third calendar quarter and 35% at the end of the fourth calendar quarter. If RACI does not have sufficient net receipts in any one quarter, the payments will be deferred. There is no guarantee to the County as to these receipts.

- Paragraph 3C addresses the Commission's requirement for an accounting of the funds. The County will be providing an accounting to RACI on an annual basis as to how the funds were used/distributed.

- RACI's board will be increased from the current nine members to 13 members effective January 1, 1998. Five members will be appointed at large, any one can seek those board seats. Four members will be appointed by the County Supervisors, one by the Des Moines Development Corporation, one by the Polk County Taxpayers Association, one by the South Central Iowa Federation of Labor, and one to be selected by the Iowa horse owners. No board member will be allowed to serve more than two consecutive 3-year terms. Terms will be staggered as provided under the current Operating Agreement.

Mr. Flynn distributed copies of Proposal No. 1 (Copy Attached) as presented to RACI's Board at their July meeting. The Board did not accept any of the proposals, but adopt the concept of expanding the grant review committee. The three proposals were for an 18-member committee, 21 member, or a 25 member grant review committee. He noted that the make-up of the committee remained fairly close to the proposal, with the only change being the number of members from the various organizations represented. Mr. Flynn called the Commission's attention to the fact that RACI has had discussions about adding members from each contiguous county to Polk County. RACI feels very strongly that they are not a parochial board. Of the $3 million in charitable bequests made by RACI

this year, $750,000, or 25%, has gone to the Iowa Economic Development Corporation for use around the state of Iowa, most of which goes outside of Polk County.

Mr. Flynn stated that RACI felt substantial progress had been made, had addressed the concerns stated in the Order to Show Cause. RACI would like to have the agreement approved as presented in order to avoid the contested case hearing.

Commissioner Hansen asked Mr. Flynn to clarify what RACI and the Supervisors have agreed on as to Proposal #1, and how the grant review committee would function. Mr. Flynn stated that RACI's board had adopted the proposal, and were not aware of any objections on Polk County's part. Mr. Flynn stated the proposal was not presented to Polk County. Commissioner Hansen asked if it was part of RACI's charitable distribution concept to turn the process over to this committee. Mr. Flynn stated one of the reasons he felt the County would not be overly concerned with this proposal is that they getting the first net receipts, then the grant review committee would deal with the distribution of the remaining funds. Commissioner Hansen asked if the grant review committee would serve as an advisory board or supplement to the regular Board. Mr. Flynn stated that RACI currently has a 9-member grant review committee who makes recommendations to the full board. He is not aware of any recommendations made by the committee to the Board that was not approved by the Committee. This committee is responsible for reviewing all of the applications, doing any necessary research, and making recommendations to the full RACI board.

Chair Sealock asked if the proposed agreement was subject to agreements with the horse groups. Mr. Flynn stated that it was subject to RACI's ability to enter into a five-year agreement. RACI has included proposed purse levels in its five-year projections. One of RACI's major concern is that there be no legislatively mandated purses; thus making important to obtain some type of agreement from the horse groups. Mr. Flynn noted that a bill mandating 15% purses passed in the Iowa Senate last session. If 15% mandated purses became a reality, RACI calculates they would be paying an additional $30 million in purses over the next five years, which would greatly reduce RACI's ability to make charitable contributions. Mr. Flynn noted that they have not reached agreements with everyone, but feels the agreements will be reached early next week.

Commissioner Allen asked Mr. Flynn if there were any limitations that would preclude RACI or Polk County from adding additional stipulations to the proposed agreement before the Commission. Mr. Flynn indicated the parties are not contemplating any substantive changes. There could be a few areas to be covered when the lease is drawn up, but the lease will be brought before the Commission for approval. Commissioner Allen stated that from what she was seeing, there was a possibility that the lease could be ambiguous. Mr. Flynn stated that it was RACI's goal to "lock everything down".

Commissioner Peyton, noting that the effective date of January 1, 1998 for the proposal corresponds with the new license year and the anticipated gaming license application next month, stated that he felt the proposal should be considered in the context of an application renewal. If that assumption is correct, he wondered if it would be appropriate

to amend the current renewal application to include this proposal as the proposed operating agreement. Mr. Flynn concurred with Commissioner Peyton's comment, noting that the proposal would govern the relationship between RACI and Polk County for the next several years.

Commissioner White stated that he felt the Commission should have the lease agreement, as well as those with the horsemen, to review prior to giving any approval. Mr. Flynn stated that a horse agreement was prepared and has been signed off on by the Thoroughbred representative. He noted that the Quarter Horse group had met the previous evening and that he had received a couple of changes which would require all parties (RACI, Thoroughbred and Quarter Horse) to sign off on. With regard to the lease, Mr. Flynn stated that discussions had been held as to whether or not a lease should have been presented to the Commission at this meeting. The parties did not want to appear presumptuous, and decided that if the Commission approved the concept of the proposal, a lease could be drawn up within 24 hours.

Commissioner White reiterated his concern that the Commission was being asked to approve the proposed agreement without having all of the relevant information, namely a lease agreement and the horsemen agreements. He also felt the January 1, 1998 effective date for the agreement between Polk County and RACI tied it to the license renewal currently before the Commission.

Mr. Flynn agreed with Commissioner White's comments, and asked that if the Commission agreed with the concept of the agreement, that it be preliminarily approved subject to the Commission reviewing the lease and five-year agreement with the horesemen groups. Commissioner White stated that preliminary approval would be "empty". Mr. Flynn stated that it would not be "empty" to RACI as they would have a better understanding of where they stood with the Commission and being an operational entity. He feels the agreements can be obtained in a very short time frame.

Commissioner White asked Mr. Flynn why the parties made the agreement effective January 1, 1998. Mr. Flynn indicated there were a number of reasons, some of which were that the new board members will have to submit and undergo background investigations and the County has already made commitments for the money they are to receive this year. Both parties felt it would be better to finish out the year under the current Operating Agreement, and start new in 1998. RACI felt that the County had made some major concessions in the proposed agreement.
Commissioner Peyton asked if RACI would face any hardships or unreasonable burden if the Commission withheld action on the proposed agreement until the October Commission meeting. He does not see any reason why the racing license and gaming license renewal applications can not be handled jointly at that meeting which would provide RACI with some time to address the concerns expressed by Commissioner White.

Mr. Flynn advised Commissioner Peyton that the main problem for RACI is the uncertainty for their employees. He indicated they would like to have some kind of

feedback as to what is or is not acceptable to the Commission. Mr. Flynn stated the parties put the agreement together as they felt it would eliminate the need for the contested case hearing; however, if the Commission feels the proposed agreement has no impact on the contested case hearing then there is no need to resolve any issues at this time. He stated that RACI and Polk County would appreciate some indication as to how well they are doing in addressing the Commission's concerns.

Commissioner Peyton stated that he was very reluctant to comment on the proposed agreement prior to the contested case because of some practical concerns regarding the legality of the contested case and the kind of evidence they will be allowed to hear and consider. He feels any discussion regarding the proposal would only serve to prejudice the contested case. Commissioner Peyton stated that the RACI and Polk County did deserve some credit for reaching this point, but that the practicality of the agreement, because of the way it is drafted and being effective January 1, 1998, should be considered in the context of the license renewal.

Commissioner Hansen stated that he felt this would be a hollow occasion if the Commissioners had taken the time to listen to everything that has been said about the proposed agreement and then found themselves gagged because of the anticipated contested case. He stated that he would prefer to adjourn for a quick Executive Session so that he could have a better understanding of the legal limitations facing the Commission. He does not want to continue to draw out a protracted problem, feels it is time the Commission lets the parties know what it is that three or more votes on the Commission want and expect. Commissioner Hansen moved for an Executive Session for the purpose of obtaining legal counsel on the limitations of the Commissioners' expressing their viewpoints at this time. The motion died for lack of a second.

Elizabeth Osenbaugh, Solicitor General for the Attorney General's Office acting in the capacity of an advisor to the Commission, stated that her cautions to the Commissioners to not engage in ex parte communications should not be perceived as precluding them from hearing the arguments of the parties as to whether the proposed settlement addresses the concerns stated in the Order to Show Cause as all parties are present and represented by counsel. She stated that the Commission can hear arguments, and she does not feel the interchange, nor any questions from the Commissioners, would raise any legal issues.

Commissioner Peyton stated that was not a concern for him. He stated that his concern is that by discussing what he feels are flaws in the agreement, does he then prejudice himself in the context of the contested case of having made a decision before hearing the evidence. He continued that he does not feel the Commission can properly hear the contested case in a proper way with this proposal having been discussed prior the to case. In his opinion, the proposal has to be discussed after the record in the contested case has been closed, and a decision issued. He feels that any discussion pertaining to the proposed agreement will compromise the contested case.

Jeff Farrell, legal counsel for the Commission in the contested case proceedings, stated that he was confused by the comments made by Commissioners Peyton and White. He

noted that approximately 21 months ago, the Commission started pushing RACI and Polk County toward developing a new relationship once the debt was retired. Even though the matter was on every monthly meeting agenda, the parties did not make much progress toward that goal. Ultimately, through Commissioner White's efforts, the Commission took the strongest possible action in order to force RACI and Polk County to reach an agreement. He noted that if the minutes from the previous month were reviewed, Commissioner Peyton stated that he hoped the parties could reach an agreement. Commissioner White expressed the sentiment. Commissioner Allen expressed her hope that common sense would prevail in this matter, and that the parties would reach an agreement. Mr. Farrell noted that the parties have reached an agreement, which he personally feels is a good, legal agreement that the Commission should approve. He stated that he felt the contested case hearing process was initiated with the hope that the parties would come to an agreement, and now the Commission is stating they want to hear the contested case. In his opinion, the Commission should consider the approval of the agreement, which the Commission was pushing for all along.

Commissioner Peyton advised Mr. Farrell that whether or not the agreement was acceptable is up to the Commission members. Secondly, he questioned where the matter would go should there be something about the agreement which is unacceptable to them – is the contested case postponed indefinitely while the Commission negotiates the parts of the agreement they may not like. Commissioner Peyton stated that he felt the Commission had been put in a position because of the 11th hour appeal that they should not have to be in. He noted that a contested case hearing had been scheduled, and that it should go on as planned – the record opened, evidence presented, record closed, and the Commission should make a decision on the evidence presented. At that time, the Commission can consider the proposed agreement at the appropriate time, which is in the consideration of the continuation of the license.

Commissioner White moved that the application by RACI for racing dates be deferred until the October 24, 1997 Commission meeting. At that time, RACI will have completed the negotiations with the horsemen's groups and will amend their application to include the lease agreement between RACI and Polk County to be effective January 1, 1998. Commissioner Peyton seconded the motion.

Chair Sealock called for any additional comments or questions. Commissioner Hansen stated that his mission with regard to this issue was to mend it, not end it. He noted that the Commission has asked the parties to work together, and they have. He stated that he felt the Commission was needlessly prolonging the whole process. Commissioner Hansen stated that he was not opposed to the contested hearing, but he feels that the Commission should be free to comment on that agreement when the parties have come before them with a good faith agreement, and speak to what they like or don't like about it.

Ms. Osenbaugh stated that she did not feel there was any legal prohibition due to the pending contested case of the Commissioners indicating what their concerns are with the agreement. She cited a legal case which indicated that the concerns about expressions of

bias or prejudgment of issues at the outset would be about concerns that issues of fact may have been resolved in the mind of the Commissioners, not that the Commissioners have issued the policy. She felt that all parties would concur that if there is a proposed agreement before the Commission, the Commission can ask pertinent questions and the parties can provide the answers. Ms. Osenbaugh stated that she did not want the Commission to believe that just because there was a contested case precluded it from asking any questions or expressing any concerns they have may have regarding the proposed agreement between RACI and Polk County.

Commissioner Peyton stated that was not his interpretation. He questions where the direction the Commission would take should they express doubts about the proposed agreement – do the parties renegotiate the agreement. Commissioner Peyton stated that he was ready to bring this issue to a conclusion.

Commissioner White stated that he felt his motion brings this issue to closure the fastest way possible.

Commissioner Peyton stated that unless the Commission is ready to adopt the proposed agreement and indicate it is the agreement they have been waiting for, he does not feel they have any choice but to proceed.

Commissioner White called for the question. Chair Sealock stated that it seems as if everyone wants to get to the same place, but have different opinions on how to reach the final goal. She stated that she wanted to end this matter today, and that she agreed with comments made by Commissioners White and Hansen. Chair Sealock stated that the Commission had to move forward, and needed to move forward together. She called for a roll call vote. Commissioner White's motion to defer the renewal of RACI's renewal application for their pari-mutuel license passed on a 4-1 vote, Commissioner Hansen voting no. (See Order No. 97-142)

As there was no administrative business or public comment, Chair Sealock called for a motion to adjourn the meeting. Commissioner Peyton so moved. Commissioner Allen seconded the motion, which passed unanimously.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
OCTOBER 24, 1997

The Iowa Racing and Gaming Commission (IRGC) met on Friday, October 24, 1997 at the Best Western Frontier Inn, Georgian A, 2300 Lincolnway, Clinton, Iowa. Commission members present were Rita Sealock, Chair; Brad Peyton, Vice-Chair; and members Bill Hansen, Jackie Allen and Harold White.

Chair Sealock called the meeting to order at 8:30 A.M. and noted there were two amendments to the agenda: 1) the meeting will reconvene at 1:00 P.M., and 2) insert between items 2 and 3, a presentation from Clinton County Gaming Association (CCGA). She called for a motion to approve the agenda as amended. Commissioner Hansen so moved. Commissioner Peyton seconded the motion, which carried unanimously.

Chair Sealock requested a motion to move into Executive Session for the purpose of receiving DCI background investigations pursuant to Iowa Code Section 21.5(g). Commissioner Allen moved to go into Executive Session. Commissioner Peyton seconded the motion, which carried unanimously.

Following Executive Session, Chair Sealock advised those in attendance of the amendments to the agenda. Chair Sealock called on Ken Bonnet, President of Mississippi Belle II (MB II), regarding the brief presentation by CCGA. Mr. Bonnet stated that MB II and CCGA had put together a slide show highlighting some of the various projects and organizations that had benefited from grants because of the gaming license in Clinton County. Elizabeth Snyder, President of CCGA, introduced the members of the board, and welcomed the Commission to Clinton.

Chair Sealock requested a motion regarding the minutes from the September 18, 1997 Commission meeting. Commissioner Peyton so moved. Commissioner Allen seconded the motion, which carried unanimously.

Chair Sealock called on Jack Ketterer, Administrator of IRGC, to discuss the rules before the Commission for final adoption. Mr. Ketterer first introduced Michelle Perino and Stewart Hoover, Licensing Assistant and Gaming Representative respectively for IRGC on the MB II. Mr. Ketterer advised the Commission that the rules before them remain unchanged from the Notice of Intended Action except for the rule pertaining to the distribution of receipts. He noted there were discussions with Eliza Ovrom, Polk County Attorney, who submitted some clarifying language that has been distributed to the Commissioners. Mr. Ketterer recommended approval of the rules up for final adoption.

Hearing no discussion or questions regarding the rules, Chair Sealock requested a motion. Commissioner Peyton moved to approve the final adoption of the following rules:

- Rescind 491-13.17 and insert new rule – Partnerships owning racing animals
- Amend subrule 491-13.18(1)
- Amend rule 491-20.15 – Duty to comply
- Rescind 491-20.11(6) and insert new subrule – Distribution of receipts

Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 97-143)

Chair Sealock then moved to the contract approval portion of the agenda. She called on Dan Kehl, General Manager of Catfish Bend Casinos, L.C. Mr. Kehl provided the Commission with an update regarding the pending move to Burlington for the winter months. He noted Catfish Bend has been negotiating for the past seven months with the City of Burlington for new docking arrangements due to the larger vessel. He advised that an agreement had been reached with Burlington for the dock site, and the Zoning Board has granted a special use permit to Catfish Bend. Mr. Kehl advised the Commission that the lease would be submitted for approval at the November Commission meeting.

Mr. Kehl stated that Catfish Bend intended to rebuild their barge for use as offices and kitchen facility; however, the City of Burlington did not want the barge docked on the riverfront. Bids were higher than anticipated, and since the facility could only be used six months of the year, they have elected not to rebuild the barge. One of the contracts before the Commission for approval is for the lease of a 16,000 square foot building to be used as a kitchen and warehouse facility. The food will be prepared off-site and delivered to the boat via a catering truck. Mr. Kehl submitted the following contracts for Commission approval:

- Anchor Coin d/b/a Anchor Games – Lease 3 Wheel of Gold Slot Machines; 2 Totem Pole Slot Machines
- Burlington Auto Finance, L.C. – Lease of building to house kitchen facilities
- IGT – 4 Slot Machines; 90-day Lease w/option to purchase. Included in the 195 machines approve on 5/15/97.
- J & S Electronics – Purchase of Phone System; Copiers, Computers, Supplies, Repair of Equipment damaged in fire, Other Maintenance
- Shuffle Master – Lease of 2 Shufflers, License Fees for 2 Let It Ride Bonus Table Games and Purchase of Equipment

Chair Sealock called for any questions regarding the contracts submitted by Catfish Bend. Commissioner Allen asked Mr. Kehl if the five machines to be leased from Anchor Games were included in the 195 machines approved by the Commission on May 15, 1997. Mr. Kehl indicated they were. The Anchor Game machines do not put them over the 195 machines approved in May. Commissioner Allen then asked Mr. Kehl about the contract with Burlington Auto Finance, L.C. for the lease of a building to house kitchen facilities. She noted that a bid was accepted from a related party, with the value of the transaction as $180,000 per year for five years, equating to $36,000 accumulated

expenditure for each related party for each year. In addition, she noted there was a quote for $10,000 per month, or $120,000 per year. She asked for clarification. Mr. Kehl explained that the quote for $10,000 per month was for a facility that was across the river; however, the facility was destroyed by a fire one week later. He noted that he negotiated with a partner of Mr. Winegard for the current facility. Mr. Kehl stated the building would require extensive renovations.

Commissioner Allen noted that a bid of $2,500 per month had been received from Big Muddy's in Burlington. She stated her understanding that this bid had not been accepted, but that a bid of $10,000 per month had been accepted. Mr. Kehl advised the bid that had been accepted was for $3,000 per month. He noted that Big Muddy's is currently being used and is 10% of the size of the building being contemplated for use.

Commissioner White asked about the same contract. He inquired if it was an existing building and currently in use. Mr. Kehl advised that it was an existing building, and about one-third of the building is being used. Commissioner White asked about the lease arrangements. Mr. Kehl informed the Commission that they have a five-year lease with four 4-year options on the building. Commissioner White asked if Catfish Bend had obtained an appraisal on the building. Mr. Kehl informed him they had not. Commissioner White then asked if any part of the lease payments were being applied toward a purchase price. Mr. Kehl stated that Catfish Bend was not being offered an opportunity to purchase the building. Commissioner White asked Mr. Kehl how Catfish Bend determined that lease payments totaling $180,000 over five years was reasonable without knowing the appraised value of the building. Mr. Kehl stated that they had looked at a similar but much smaller building that could be purchased for $360,000. Catfish Bend determined that it made more sense from a cash flow standpoint to lease a facility rather than purchasing a building in the event the gaming referendum failed in five years. Commissioner White asked if the lease was a triple net lease. Mr. Kehl indicated that it was; they will be paying insurance and property taxes on their portion of the building. Mr. Kehl advised the Commission that Catfish Bend is currently paying approximately $3,800 per month to lease kitchen and warehouse facilities. The proposed building will allow them to consolidate those facilities. Commissioner White asked how much it would cost to renovate the building. Mr. Kehl stated they expect to spend approximately $200,000 - $250,000. Commissioner White asked if the improvements were forfeited to the landlord. Mr. Kehl indicated they were.

Hearing no further questions, Chair Sealock requested a motion. Commissioner Hansen moved to approve the contracts as submitted by Catfish Bend Casinos, L.C. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-144)

Chair Sealock then called on Mark Lohman, General Manager of The President, who presented the following contracts for Commission approval:

- Anchor Games – Lease 20 Slot Machines
- Aristocrat, Inc. – Purchase 15 Slot Machines
- Blue Cross/Blue Shield of Iowa – Employee Health Insurance Pro Administration
- Davenport Electric Contract Co. – Exterior Façade Lighting
- US Food Service of Illinois – Food Contract
- Video Lottery Technologies Co. – Purchase 22 Slot Machines, includes Stands, Lighting and Equipment
- WMS Gaming – 20 Slot Machines; 90-day Trial with no purchase until after 3/1/98

Commissioner Hansen requested that Mr. Lohman clarify the food service contract. Mr. Lohman stated their current contract is with Sysco out of Des Moines, and they have experienced service and quality problems. Approximately three months ago, The President entertained bids from six or seven companies for the food service contract for the Davenport facility, only two or three were Iowa-based. Mr. Lohman further advised that US Food Service of Illinois would be merging with J.P. Foodservice of Des Moines, with the merger to be completed by October 31, 1997. The company will employ 99 individuals at the Des Moines facility.

Commissioner Allen asked how closely The President monitored its purchases under contracts to insure that they are being charged in accordance with the contract. Mr. Lohman indicated it is reviewed on a weekly basis. They also verify that contract terms are being met on an annual basis.

Commissioner Allen asked Mr. Lohman about the contracts with Anchor Games for 20 slot machines, Aristocrat for 15 slot machines, Video Lottery Technologies, Co. for 22 slot machines, and WMS Gaming for 20 slot machines. She noted that all of the supporting documentation for these contracts indicate The President entered into contracts with these companies at the beginning of the year, and wondered why the contracts were just now being brought before the Commission. Mr. Lohman agreed that the contracts were late in coming before the Commission; however he had thought some of these were submitted for approval with the December license renewal. When it was determined they had not been submitted, he proceeded to do so. The machines are and have been in operation. Mr. Lohman assured the Commission that The President has taken adequate steps to insure that this situation will not occur again.

Hearing no further questions, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contracts as submitted by The President. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-145)

Chair Sealock then called on Jeff Terp, Vice President of Business Development for Ameristar Casinos. Mr. Terp presented a contract with McMullen Ford, Inc. for the purchase of vehicles for winners of slot progressive bank and service to property vehicles.

Hearing no questions concerning the contract, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contract as submitted by Ameristar. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-146)

Chair Sealock moved to the next agenda item, Iowa Greyhound Association/Iowa West Racing Association – Update on Joint Proposal for Distribution of Escrow Funds. Linda Vanderloo, Director of Racing/Administration for IRGC, advised the Commission that this matter has been ongoing for about one year. There are two deadlines approaching for these entities: 1) November 1 for a plan regarding the use of the escrow fund – it appears the Commission will be receiving separate plans from the entities; and 2) December 1 – determining the supplements for the escrow account.

Commissioner White stated that there appeared to be four categories. He suggested each party submit their final offer for each category, and then the Commission would choose the option they felt was best for each category. Ms. Vanderloo stated that was a possibility, but suggested the Commission listen to Mr. Sevedge first.

Mr. Sevedge advised Commissioner White the letter he was referring to previously was AIM's response to the four items proposed by IGA. The scope being discussed is the use of the escrow fund and the appropriate way to distribute the purse supplements between the Iowa bred and non-Iowa bred dogs. Mr. Sevedge noted that the parties are close on all of the items set forth in the letter, but the one issue they have not been able to agree on is the point structure for the upcoming year. They have agreed to a six-point structure. They have not able to agree on the level at which to set the point structure. Another issue that has not been resolved is whether to distribute the escrow account now or defer distribution for another year. Mr. Sevedge stated that BR is preparing a plan for November 1st, but IGA prefers to defer a decision regarding the escrow account for another year.

Commissioner White asked Mr. Sevedge if the four areas set forth in BR's letter are inter-related. Mr. Sevedge stated they were inter-related because all of the issues affect how to build the greyhound industry in Iowa. He noted that the escrow account is a significant part of the whole picture as it will be worth approximately $7 million by the end of the year. The casino provides about $4 million per year to the escrow account.

Commissioner White asked if the Commission would have to adopt one parties' entire plan, or could they pick and choose between the plans. Mr. Sevedge stated that he felt the Commission would receive a proposal for the use of the escrow account and an explanation of how it fits in with the overall purse structure. He felt the Commission would not have the option of picking certain parts of a proposal as it related to the escrow account. He noted that if the Commission picked a higher point value than the casino supplement would support, then it would be necessary to take funds from the escrow account to support the point value.

Chair Sealock asked Mr. Sevedge if the Commission was going to be receiving two plans versus one. Mr. Sevedge indicated that was a correct statement.

Mr. Ketterer asked Mr. Sevedge if there were going to be two plans submitted regarding the distribution of the escrow account on November 1, 1997. Mr. Sevedge stated that he could not speak for the IGA. At this time, the IGA wants to revisit the use of the escrow fund in October 1998, but BR is not willing to wait. Mr. Ketterer noted that the arbitration decision states: " The arbitration panel reminds IGA and IWRA that a plan for the disposition of the escrow funds is to be submitted to the commission by November 1, 1997, per the December 19, 1996 Arbitration Decision." The decision further states: "Unless a specific plan is in place for the intended use of the escrow account, the arbitration panel sees no reason or purpose for contributions to the account beyond 1998." Mr. Ketterer clarified that Mr. Sevedge was stating that IWRA was going to submit a plan by November 1, 1997, but could not guarantee that IGA would do so, and if they did, they would suggest delaying distribution until October, 1998. Mr. Sevedge stated that IWRA felt the Arbitration Decision was binding on them just as any other directive of the Commission would be.

Mr. Ketterer stated the Commission will expect to see IWRA's proposals on November 1st, and it will be up to the IGA whether or not they submit a plan for distribution or a request to defer distribution until October 1998.

Chair Sealock called on Frank Biagioli, Director of the Iowa Gambling Treatment Program in the Department of Health. Mr. Biagioli stated that he had put together a packet of materials for the Commissioners to give them an idea of the types of materials available through the program, as well as some training sessions. He noted that the number of gambling treatment providers had increased from eight last year to 12 in the current year. A 1995 study on problem gambling indicated 1% of the population had a severe gambling problem, another 2.3% were approaching severe problems. Mr. Biagioli stated he felt that was a conservative estimate. At that time, there were no slot machines in operation at the tracks except for at the very end of the survey. Since the survey was conducted, three riverboats have been added as well.

Mr. Biagioli noted that the number of individuals experiencing gambling problems has increased 10% from fiscal year 1996, over 970 individuals have received counseling services versus 884 in the previous year. Counseling hours have increased significantly, as have public awareness and education.

Mr. Biagioli advised the Commission that the racetrack casinos do a good job of posting materials about problem gambling and gambling responsibly. He noted that Prairie Meadows has a voluntary trespass program that is tied to a check cashing refusal policy in the event someone would make it pass the gates. Mr. Biagioli noted that BR also does a good job of displaying materials, and has been very prominent in the underage gambling area.

Mr. Biagioli stated that a video on problem gaming has been produced along with a study guide. Extra copies have been produced for the licensees to be used in training their employees. He noted that a web site, www.1800betsoff.org, has been established and asked the licensees about the possibility of linking their sites to this site. Mr. Biagioli advised the Commission that Dubuque Greyhound Park & Casino (DGP&C) linked the web sites within an hour of his phone call. Prairie Meadows has also agreed to link the web sites. DGP&C has run an ad in the Daily Racing program for the last couple of years about the gambling treatment program, at no cost to the program. He noted that some of the licensees have established check-cashing limits.

Mr. Biagioli stated that the help line has received approximately 3,500 urgent calls and has fielded about 10,000 calls to the help line. The program did about half the amount of advertising and public awareness educational messages in fiscal year 1997 as in 1996. He asked the Commission for any suggestions to help the program or the licensees to make people more aware of the gambling treatment program. He thanked the Commission for their support of the program. Mr. Biagioli noted there are fifteen states that address problem gambling with money, anywhere from $10,000 to $2.5 million or so. He noted that Nevada does not devote any funds to dealing with problem gambling.

Chair Sealock asked Mr. Biagioli about calls received from out-of-state. Mr. Biagioli stated they don't receive a lot of calls as there is a national number published; however, he does receive calls from other states on Iowa's program. Chair Sealock noted that IWRA has given some grant money to Nebraska providers to help with their gambling treatment programs.

Commissioner White asked Mr. Biagioli if there was any kind of standards regarding the posting of signage and posters regarding the gambling treatment program. Mr. Biagioli stated there was not. Commissioner White asked Mr. Biagioli who was responsible for making sure the licensees are providing information regarding the gambling treatment program. Mr. Biagioli stated that he did not have any regulatory authority with the licensees.

Commissioner Hansen commended Mr. Biagioli on the gambling treatment program. He noted that Iowa's addiction rate of 2.3%, which is below the national average of 5%. He stated that if Iowa funds the program at $2.5 million, we would be near the top of all the states that dedicate funding to deal with problem gambling. Mr. Biagioli stated that he receives calls from other states asking how Iowa's program is funded. Commissioner Hansen noted that Iowa has treatment providers in 92 of the 99 counties.

Mr. Ketterer pointed out that the Commission has been able to see what some of the funds from the non-profits do. Since the licensees are funding the gambling treatment program, it is in their best interest to cooperate.

After a short break, Chair Sealock called on Racing Association of Central Iowa/Prairie Meadows Racetrack & Casino (RACI/PMR&C). Tom Flynn, legal counsel for RACI,

and Bob Farinella, General Manager and CEO of PMR&C, were present to address any questions dealing with the bylaws or lease.

Chair Sealock called for any questions. Commissioner Peyton stated that he had questions relating to the bylaws. He noted that the bylaws were well written. Commissioner Peyton asked if a new operating agreement was required. Mr. Flynn stated that RACI did not feel an operating agreement was necessary, nor did Polk County legal counsel.

Commissioner Peyton's next question concerned term limits for RACI's Directors. He read the following from the Bylaws: "No Director may serve more than two consecutive three-year terms, except that a Director elected or appointed to complete an unexpired term of less than three years may serve two consecutive terms thereafter. Time spent prior to January 1, 1998 shall not be counted." He wondered what that meant to a Director with a partial term prior to January 1, 1998. He asked if all Directors would have a clean start beginning January 1, 1998. Mr. Flynn gave the following example as an answer: Gary Palmer and Keith Hopkins could be up for election, if they were re-elected, they would serve a three-year term, but their consecutive three-year terms would not start until three years from now. Commissioner Peyton asked if the same scenario would apply to a Director who was in the middle of their term, or if someone resigned. Mr. Flynn advised that the wording in the Bylaws applied to terms beginning on or after January 1, 1998. Commissioner Peyton stated that was his interpretation, but wanted to have the matter clarified.

Commissioner Peyton stated that he had some concerns about issues surrounding Polk County's appointments to RACI's board that have surfaced since the last Commission meeting. He stated it was his understanding that Polk County would appoint an additional person to the Board to make up their four appointees to RACI's Board. He noted there had been some discussion about appointing four new members. Mr. Flynn stated there had been discussions at the County's level, but that was not contemplated at RACI's level, nor were there any discussions between the two parties about this issue. Mr. Flynn stated that RACI's opinion is that the County has one new appointee to be made in January, and the current appointees will complete their terms. He noted that Mr. Hurd, a current Polk County appointee, is resigning but will be the appointee for the Des Moines Development Corporation.

Commissioner Peyton clarified that the term for one of Polk County's appointees was up this year. Mr. Flynn stated that Lacey Spriggs' term was ending. Commissioner Peyton asked if he was going to be reappointed. Commissioner Peyton stated that during the contested case hearing, he expressed his concerns to several witnesses that Polk County's appointees would be subject to some type of retribution if they did not do what the County wanted them to do. He was concerned about them being able to exercise his or her own independent judgment in the best interests of the licensee. Commissioner Peyton stated that he specifically asked if Mr. Spriggs was at risk because he voiced his opinions or sided with RACI appointees. Several of the witnesses indicated they had no

knowledge of the matter, or that he would be reappointed. Commissioner Peyton is disturbed by the fact that he is not being reappointed. He went on to note that he does not know everyone on RACI's board as well as he should, but those that he does know, he has a great deal of respect for, including Mr. Spriggs. He found Mr. Spriggs to be a very articulate spokesman, an educator and administrator, and has a high level of integrity. He is disturbed by the idea that people on the Board can be replaced because they did not follow their marching orders. He asked if there was someone who could dispel the notion. Mr. Flynn stated that Mr. Spriggs was highly regarded by other Board members, but that terms are only for three years and there is no guarantee that Board members will be reappointed at the end of their term. He does not feel RACI can interfere with Polk County's appointments to the Board as long as they comply with the rules and regulations governing RACI's Board. Mr. Flynn suggested that Eliza Ovrom, Polk County Attorney, address Commissioner Peyton's concerns about Mr. Spriggs.

Commissioner White asked Mr. Flynn when RACI's annual meeting was to be held. Mr. Flynn indicated it was scheduled for November 19, 1997. Commissioner White asked if the Articles of Incorporation addressed the issue as he did not see it in the Bylaws. Mr. Flynn directed Commissioner White to Section 4.2 at the bottom of Page 3 in the Bylaws.

Commissioner Peyton stated that he did not have a problem with the Bylaws dealing with the term limits, but did have a problem with individuals not being reappointed, not just from the retribution angle, but also for continuity. He noted that RACI's board will have five or six new individuals along with a group of experienced individuals. The new board has addressed concerns that RACI's board was not representative of the community. Commissioner Peyton stated he feels very strongly that the Polk County appointees should remain the same unless there is some reason they are unsuitable, unqualified or have some particular bias that distracts from their service on the Board. He stated that any current appointees to RACI's board should have an automatic reappointment unless it can be shown that they are unqualified, unsuitable or biased. Commissioner Peyton proposed that the Bylaws be approved subject to an amendment to protect the current appointees to the Board. Mr. Flynn stated that he understood Commissioner Peyton's concerns, however, he feels the County would deem Commissioner Peyton's amendment to be a material change to what they have agreed to when they signed off on the proposal and lease. He feels this would give the County a reason to reopen the negotiations. Commissioner Peyton asked the County to come forward and explain why the current appointees are not suitable.

Ms. Ovrom stated that the County's appointees were for three-year terms and at that point it is up to the County whether to reappoint an individual or appoint a new individual. She stated that the Polk County Board of Supervisors, following negotiations, felt they would have the ability to appoint four new individuals to RACI's Board, that for this one time all appointments would be open. Commissioner Peyton indicated that comment begged the question of what was wrong with the current appointees. Ms. Ovrom stated that Polk County appreciates the service of those currently on the Board; however, Polk County considers this to be a new day. Commissioner Peyton reminded Ms. Ovrom that he had asked several witnesses about Mr. Spriggs and his appointment to the Board during the

contested hearing, and everyone stated he was a good representative and knew of no reason why he would not be reappointed to the Board. Now 30 days later it is apparent he will not be reappointed, and the consensus seems to be that if the other Polk County appointees can be removed, that will also occur. Commissioner Peyton stated he feels that is a threat to the independence of the Board members. He stated that he is concerned about the implication of an ability to retaliate or retribution when they are serving to the best of their ability without sufficient evidence they are unsuitable, unqualified or not acting in the best interest of the licensee. Commissioner Peyton stated that if Polk County considered his proposed amendment so material that all issues have to be revisited, then he was willing to do so.

Commissioner White moved that the proposed Bylaws of RACI be accepted with the following condition: That the Bylaws of RACI be amended at the commencement of the November 1997-1998 year to include a provision that requires the reappointment of all current Polk County appointees to the RACI Board of Directors for the maximum number of terms allowed in the Bylaws as amended from time to time, unless by the majority vote of RACI's Board, and this Commission, said Board members are found to be unqualified or unsuitable. Commissioner White indicated that he included a reference to the November annual meeting because it is his understanding that is when Mr. Spriggs' term would expire.

Chair Sealock stated it was her understanding Commissioner White's motion would require a vote of both RACI's Board and the Commission for a member to be removed from the Board. Commissioner White stated he felt that needed to be in the motion to address concerns about control and continuity on the Board.

Commissioner Peyton seconded the motion. He stated that the Board should have the ability to remove a Director if they are engaged in some kind of illegal conduct or are unsuitable. At this time, he has not heard that being the case with any of Polk County's appointees.

Mr. Flynn advised the Commission that Martha Willits appointed Mr. Spriggs when she was on the Polk County Board of Supervisors. As the faces and names have changed on the Board of Supervisors, it is not unreasonable that the new members have individuals they would like to appoint. He asked the Commission if they really wanted to get that involved with the licensees where they are determining who will serve on the boards and how long. He is concerned that if someone appointed to the Board does not carry out their duties, the Board has to have the ability to monitor what happens without requiring the directors to be grandfathered in. Mr. Flynn stated that RACI liked Mr. Spriggs, and would like to have him remain on the Board, but in order to honor the integrity of the process and the negotiations, RACI feels it is fair and reasonable to anticipate that any of the appointees might not be reappointed. He wondered if other appointees would be grandfathered on to the Board.

Commissioner Peyton stated that the Commission does not want to get involved in picking Board members. This issue about two particular board members, one whose term

expires this year and Mr. Machia whose term will expire next year. Commissioner Peyton stated that he is not addressing the selection of the directors, but protecting those directors who had the courage to vote their conscience during a difficult period of time, and what now appears to be retaliation for them exercising their judgment. He is concerned with the protecting the ability of Board members to express their opinions openly and honestly. Commissioner Peyton stated if the same situation occurred with another licensee, he would do the same thing. He feels this action is appropriate under this set of circumstances, and does not intend it to be taken as a broad statement that the Commission is going to meddle in the affairs of the licensee's boards.

Chair Sealock reminded Commissioner Peyton that the motion includes a provision requiring the Commission to vote to approve Board members. Commissioner Peyton stated the Commission's vote only applied to the removal of any Board members. The intent of the motion is to preserve the right of the licensee to indicate that someone is unsuitable. It is not his intent, nor is it Commissioner White's, to cement a Board member in place indefinitely. In this situation, he sees no evidence that the Board member being replaced is unworthy. Commissioner Peyton reiterated his concern that there be some continuity on the Board.

Chair Sealock stated that she did not feel it was the Commission's responsibility to tell Polk County whom they can appoint to the Board. She noted that each Commissioner is an appointee and has been told not to assume they will be reappointed. Chair Sealock stated that she did not feel this action was appropriate for any licensee, not just RACI.

Mr. Flynn stated he felt the Commission was speculating that Mr. Spriggs is not being reappointed to RACI's board because of the way he voted, but does not feel there is any evidence to support that thought. He also noted that the proposal that was negotiated, delivered to and accepted by Polk County, and approved by the Commission, did not contemplate this issue. Mr. Flynn feels that to visit the issue at this time is not timely and will upset everything that has been accomplished.

Commissioner Peyton stated that the issue was timely because at the time the issue was visited, he was assured and told there was no problem with Mr. Spriggs, and this issue has arisen since that meeting. Ms. Ovrom advised Commissioner Peyton that she felt he had been told that no decision had been made at that point as to whom would be appointed to the Board. She noted that a lot of discussions have occurred since the last meeting due to the deadline for making appointments to the Board. She stated that a decision regarding Mr. Spriggs was not made until well after the last Commission meeting.

Commissioner White noted that Polk County has four appointees out of 13, and it is the Commission's responsibility to make sure that RACI has an independent Board. These individuals may be Polk County appointees, but their first loyalty has to be to the Association for which they are a director. He is concerned about interference from Polk County, and it is the Commission's responsibility to make sure that the RACI Board is

independent of Polk County. He is in agreement with Commissioner Peyton that the removal of certain Board members looks like retaliation.

Mr. Flynn reiterated that he is not aware of any evidence to support the Commission's concern at this time. He stated that he has not seen or heard any public comments by Polk County stating they were replacing Lacey Spriggs because of the way he voted. He feels the Commission should be more concerned if there were a number of votes where the Polk County appointees voted one way and everyone else voted another way. This has not occurred to this point – there has never been a 6-3 vote under the current Operating Agreement. Mr. Flynn stated that he felt the new County appointees should be allowed to serve on the Board and see how they vote. If they always take a position contrary to RACI and favors Polk County, then he feels the Commission would have the right at that point to step in and ask those Board members whom they are representing.

Commissioner Peyton stated that over a period of time, he felt there would be consensus on most issues on the Board. His concern is not with the Board members' ability to exercise their independent judgment. His concern is with two individuals who he feels are being retaliated against because of what they have done in the past in the situation the Commission just dealt with. Commissioner Peyton stated that the scope of his concern is that narrow. He noted there would not be any evidence of retaliation because no one is going to appear before the Commission and state that someone is not being reappointed because they did not follow the County's wishes. He asked if someone could provide a better explanation of why Mr. Spriggs was being replaced and also address Mr. Machia's situation.

Commissioner Allen referred to a Des Moines Register article dated October 17, 1997 written by Frank Bowers. The article stated that two county appointees, David Hurd and James Machia, already serve on the Board and that the Association and Polk County differ as to whether these two can serve out their terms. The article also quotes Supervisor Tom Baker as saying "That when the County and Association officials hammered the pact last summer, it was understood that the County would get four fresh appointees."

Mr. Flynn stated that was an incorrect statement. He stated that this issue was not discussed between the two parties, and RACI never agreed to that. Mr. Flynn stated that whatever Polk County read into a situation, and what they walked away with are entirely different. He noted that Polk County has picked three appointees, with one of those intended to replace Mr. Machia, but that appointment will not be acknowledged by RACI. Mr. Machia will serve out his term.

Commissioner White asked Mr. Flynn if the motion on the floor would eliminate that issue. Mr. Flynn stated he was not sure the motion was needed. Polk County has indicated they do not need to approve RACI's Bylaws. The Bylaws are very clear that Mr. Machia would serve out his term. Commissioner White stated that it was possible that RACI could face a lawsuit from Polk County over this issue. He asked if the motion would help. Mr. Flynn stated that the motion would grandfather in Mr. Spriggs and Mr.

Machia, and asked what impact that would have on the balance of the Board. Commissioner White indicated the Board would remain at 13 members.

Commissioner Hansen stated that he felt the situation was at a crucial crossroads at this point, and is supportive of the continuity concept. He expressed his thought that RACI and Polk County Board of Supervisors were entering a new era of good faith. However, he started to read incendiary statements like the one referred to by Commissioner Allen. He stated that the following quote is not necessarily reflective of the majority of the members of the Board of Supervisors: "Supervisors Baker and Mauro on Thursday said they want to replace Machia who they view as too friendly to RACI. Mauro, who appointed Machia, said he may ask for his resignation." Commissioner Hansen stated that the statement really angered him. He noted that he is reminded of a political adage that says if you keep rocking the boat long enough, it will sink. He feels this is what will happen with Polk County and RACI because of a few supervisors who don't necessarily reflect the majority view of the Board of Supervisors. Commissioner Hansen stated that he does not see any other recourse in view of what is occurring other than to support the amendment to the Bylaws.

Mr. Flynn stated that RACI would like to have Mr. Spriggs and Mr. Machia on the Board. However, due to the way in which the proposal was negotiated, both Mr. Spriggs and Mr. Machia understood at the time of the vote they may not be reappointed to the Board when their terms were up. Mr. Machia asked if he would be allowed to serve out his term, and was assured that he would be allowed to do so by RACI.

Commissioner White noted that the motion on the floor would give Mr. Spriggs and Mr. Machia the opportunity to continue to serve on the Board if they so desired. Mr. Flynn asked how long Mr. Spriggs would be grandfathered in. Commissioner White stated that Mr. Spriggs would be able to serve a three-year term plus six additional years. Mr. Flynn clarified that he would be able to serve the same as those individuals appointed after January 1, 1998. Commissioner White stated the same scenario would apply to Mr. Machia.

Ms. Ovrom stated she felt the Commission was on very thin legal ground, that the proposed action is not within the Commission's statutory authority, and is directly contrary to its action one month ago when they approved the proposal between RACI and Polk County because the agreement does not contemplate this issue. She stated that Mr. Spriggs and Mr. Machia understood they were up for reappointment, or non-reappointment. Ms. Ovrom stated she is very concerned about the impact of the proposed action on the entire agreement, which everyone has worked so hard to reach.

Mr. Ketterer asked Mr. Flynn how many at-large members serve on the Board. Mr. Flynn indicated there are six on the current board, and there would be five under the new agreement. Mr. Ketterer asked if someone had just resigned from the Board. Mr. Flynn indicated that was correct. Mr. Ketterer asked if that individual had been replaced. Mr. Flynn indicated a replacement had not been named. Mr. Ketterer asked if it was possible to name Mr. Spriggs as the replacement. Mr. Flynn indicated they could not because they

are going from 6 at-large members to five. Mr. Ketterer asked whom the horsemen representative was. Mr. Flynn advised Mr. Ketterer that all of the horsemen groups have been requested to submit the names of nominees. Mr. Ketterer asked if it would be possible for Mr. Rassmussen or Mr. Palmer to fulfill that role. Mr. Flynn stated that Mr. Palmer would not meet the criteria, but that Mr. Rassmussen would. There was some additional discussion regarding this seat on RACI's Board.

Chair Sealock stated that she did not have a philosophical objection to anything Commissioner Peyton had proposed, but she is concerned about setting a precedent for voting on non-profit board members. She asked if he would be satisfied with Mr. Ketterer's suggestion.

Commissioner Peyton stated he did not have a problem justifying the amendment in terms of the other licensees. The Commission has not faced a similar situation with any other licensee. This would put them on notice that he would have a problem with the situation.

Commissioner White stated he felt the action was necessary because the Commission has not yet seen how the new Board will function, and don't know what, if any, influence may occur.

Mr. Flynn, noting that three board members and management were in attendance, asked for a few minutes to discuss the issues raised. He clarified Mr. Ketterer's earlier statement: that Mr. Rassmussen could be the representative of the horsemen, and Mr. Spriggs would then fill an at-large position on the Board. That would not leave a position for Mr. Machia.

Commissioner Peyton stated that he was not fond of the proposed compromise as it removes the attention from where it should be, and put RACI in the position of solving a problem created by someone else. The problem is that there is going to be retaliation against citizens. Commissioner Peyton asked Ms. Ovrom to explain the reasons for Mr. Spriggs and Mr. Machia not being reappointed to the Board.

Ms. Ovrom reiterated that Martha Willits, who is no longer on the Board of Supervisors, appointed Mr. Spriggs. Tom Baker, who filled her position on the Board, has nominated Rudy Simms to sit on RACI's Board. She provided a brief background of Mr. Simms' qualifications. Commissioner Peyton asked if the County had other appointments. Ms. Ovrom advised Commissioner Peyton that Polk County had to make its appointments 30 days prior to RACI's annual meeting. She stated that she felt Commissioner Peyton's assumption that the individuals were not being reappointed was in retaliation is wrong and that he is overlooking the nature of the process.

Mr. Anderson advised Chair Sealock that he would like to offer legal advice in closed session if the Commission members were agreeable to a closed session. Commissioner White stated that the Commission is not in litigation. Mr. Anderson stated that a closed session could be held when there is litigation or pending litigation. Commissioner White

stated that there had been no threat of a lawsuit at this point. Commissioner Allen stated that she would like to hear what Mr. Anderson had to say. Commissioner White concurred, but stated that he did not think it needed to be done in closed session.

Mr. Flynn stated that if the Commission acts on its motion, he is very concerned that the situation between Polk County and RACI will be back where it was at prior to the contested case hearing.

Commissioner Peyton stated it was his understanding that RACI could write its Bylaws without Polk County's approval. He noted that the Commission's rules allow the Commission to grant approval with any conditions they deem appropriate. Commissioner Peyton stated that he felt the amendment was very appropriate and pertinent to the situation. He stated that he had formulated his own legal opinion on this matter and doesn't see where there is a problem.

Commissioner Allen asked Chair Sealock if she had addressed Mr. Anderson's request. Chair Sealock indicated she had not, but that she would entertain a motion. Commissioner Allen moved to go into Executive Session for the purpose of receiving legal advice from counsel pursuant to Iowa Code Section 21.5(c). Commissioner Hansen seconded the motion. Chair Sealock requested a roll call vote. The vote was 3-2, Commissioners Peyton and White voting no. (See Order No. 97-147)

[It was determined at a later date that a two-thirds vote of the Commission was necessary for an Executive Session to take place. As the above vote did not meet that criteria, the Commission voted at its November 20, 1997 Commission meeting to make the minutes from that Executive Session part of the public record of the October 24, 1997 minutes.

EXECUTIVE SESSION MINUTES FROM OCTOBER 24, 1997

Andy Anderson, Assistant Attorney General representing the Commission at this meeting, advised the Commissioners that he was concerned about the action they were proposing to take, and were drawing themselves back into litigation. He noted the Commission has approved the agreement between Racing Association of Central Iowa (RACI) and Polk County, and now they are seeking to force the County to retain particular board members. He stated he did not feel they had the statutory authority to do so. Mr. Anderson stated the Commission has the statutory authority to have background checks done, and based upon that investigation, determine whether or not that person is eligible for a license. The statute does not address retaliation. The County, and any other group that elects board members, has the right to remove that board member if they so choose. Mr. Anderson stated that he felt the Commission was exceeding its statutory authority.

Commissioner Peyton stated that he disagreed with Mr. Anderson's statement. He felt the issue has to do with approval, and that Commission rules state that the Commission has the authority to condition the approval upon such facts and circumstances as deemed appropriate. (491-20.15(2)(b)) He interprets this rule to state that if the Commission feels

there is a threat to the integrity of the industry, then they have the right to condition the approval. Secondly, he stated that Polk County does not have the right to sue the Commission over a condition placed on Prairie Meadows Racetrack & Casino (PMR&C) license. Polk County is not the licensee. If Polk County has a problem with the bylaws, they should take that up with PMR&C. Polk County can pull the plug on PMR&C if they so choose.

Mr. Andersen stated that the bylaws, and the agreement approved by the Commission, give Polk County the right to appoint whomever they want to the RACI board as long as those individuals pass background investigations. Commissioner Peyton stated that Polk County had appointed both of the individuals to the RACI board that were the basis of this discussion. Mr. Anderson indicated that he felt the Commission wanted to force Polk County to retain board members past their designated term, which is outside the Commission's authority. Polk County can name anyone they choose to the RACI board, and if they pass the background check, then the Commission should issue them a license. He does not feel the Commission has the ability to pick and choose who will be on the RACI board as Polk County's representatives. Commissioner Peyton stated that Polk County had chosen these individuals to serve on RACI's board, not the Commission. Mr. Anderson concurred, but noted that Mr. Spriggs' term expired next month, therefore, Polk County could appoint whomever they wanted to fill the three-year term. Commissioner Peyton asked what Mr. Anderson's response would be if Mr. Spriggs were to advise the Commission that he had been threatened with removal from the board if he did not vote the way the County wanted him to vote. Mr. Anderson stated that was between Mr. Spriggs and Polk County. Commissioner Peyton stated that he felt it violated Mr. Spriggs' fiduciary obligation to the body he represents, which is the Commission's licensee.

Mr. Anderson stated that RACI has agreed to a particular plan, and indicated they would like to see Mr. Spriggs remain on the Board, but their major concern is that the Commission is going to cause the agreement between RACI and Polk County to collapse due to this issue, and are willing to give up Mr. Spriggs. He continued that if RACI feels there has been a violation of the fiduciary duty, then RACI should...

Commissioner Peyton noted that RACI is the Commission's licensee, and chooses not to recognize that responsibility, then the Commission has the right to exercise oversight in this matter. Mr. Anderson asked Commissioner Peyton if he had any evidence to substantiate his remarks. Commissioner Peyton suggested delaying this issue for 30 days, and requesting that Mr. Spriggs appear before the Commission at the next meeting.

Commissioner White suggested issuing an order prohibiting RACI from seating any new board members at their annual meeting until this issue is resolved. Commissioner Peyton indicated he did not feel that was necessary as their meeting does not take place until after the Commission's November meeting. He was advised that RACI's annual meeting would take place two prior to the Commission's November meeting.

Commissioner Peyton reiterated that he wanted to hear from Mr. Spriggs at the next Commission meeting. He stated that he had asked specific questions during the contested case hearing, and individuals under oath, provided answers that were directly in contrast to the events occurring at this time. Commissioner Peyton stated that his purpose in asking the questions he did about board members is that Mr. Spriggs had already been informed that he would not be reappointed to the board. Commissioner Peyton stated that witnesses, under oath, indicated that was not correct. Mr. Anderson advised Commissioner Peyton those incidents were perjury violations. He reiterated that he did not feel the Commission had the authority to force Polk County to reappoint someone to RACI's board. Commissioner Peyton advised Mr. Anderson that had the Commission known at the conclusion of contested case hearing what they know now, the Order would have been significantly different.

Commissioners Peyton and White stated that the Order was prepared based on the evidence presented, and taken at its face value by the Commission.

Mr. Anderson asked Mr. Ketterer his position on this issue. Mr. Ketterer stated that he had discussed this issue with Commissioner Peyton and feels that Commissioner Peyton has a right to hear from Mr. Spriggs. Mr. Anderson clarified that Mr. Ketterer was in agreement with deferring this issue for a month. Commissioner White asked if the license was going to be deferred also. Commissioner Peyton said the license application did not need to be deferred, it could be approved subject to certain conditions, but the bylaws are separate from the license application.

Mr. Anderson stated that a deferral on this issue would also allow time for some research to be done so that the Commission would not take any action beyond their statutory authority, which would leave them open to a lawsuit. Commissioner White stated that every time the Commission tries to indicate they do not like what Polk County has done, the AG's Office indicating they are opening themselves up to a lawsuit. Mr. Anderson advised Commissioner White that the Commission has a statutory structure they have to follow and stay inside of the confines set forth. Commissioner Peyton stated they were following the statutory structure. Mr. Anderson stated they were not following the statutory structure in their attempts to force Polk County to appoint someone to the RACI board they did not want to appoint.

Commissioner Peyton stated that the Commission issued an Order in the contested case hearing based on the testimony presented, and if the testimony was false or incorrect, then that would affect the Order rendered by the Commission.

Commissioner Allen asked if there was some way to resolve this issue prior to RACI's annual meeting. Mr. Anderson noted that if the Commission's meeting were changed, it would come before the referendum in Clarke County. Commissioner Allen clarified that the special meeting would be confined to PMR&C.

Commissioner Peyton stated that if the bylaws were approved, they would be in effect even if RACI did not have their annual meeting. Mr. Ketterer suggested that RACI could

postpone their annual meeting. Commissioner Peyton stated that was RACI's decision, but if they acted prudently, they would elect to postpone their annual meeting. Commissioner White asked Commissioner Peyton how that would preserve his right to take any action. Commissioner Peyton stated that the bylaws are subject to the Commission's approval. Commissioner White stated that he felt the Commission would either have to prohibit RACI from holding their annual meeting so that new board members could not be seated. He felt the Commission either needed to deal with this issue today, hold a special meeting before their annual meeting, or direct them to postpone their annual meeting. He does not feel the Commission wants to be in the position of removing a director who has been seated and is functioning as a member of the board.

Commissioner Peyton stated the Commission would just hear more denials of what occurred. He noted that Mr. Machia, another RACI board member scheduled to be replaced, is in attendance. He suggested that possibly he could give some input on what he has been told with regard to his reappointment to the RACI board. Commissioner Allen was in agreement with this suggestion.

Commissioner Hansen stated that the key points were on Mr. Spriggs as his term on the board is up, and Mr. Machia's term does not expire until 1999.

Mr. Anderson pointed out that the Commissioners are gubernatorial appointees, and sometimes gubernatorial appointees are removed at the end of their term because they don't "toe" the line, but that is the appointee's right as the appointee. He feels that since the Commission has sanctioned an agreement between Polk County and RACI, he feels they are trying to rewrite the appointment process.

Commissioner Peyton reiterated that the Commission held a contested case hearing in which specific questions were asked within the context of the hearing in order to determine whether the Polk County Board of Supervisors was exercising any kind of control over their appointees. That duty falls within the statutory authority of the Commission. The Commission was given one set of facts, and 30 days after the Commission has approved everything, a different set of facts. Commissioner Peyton stated that he wanted to know what has changed within the 30 days. This is the issue he wants addressed; the issue is not whether the Commission has statutory authority. He wants to know if the Commission was told the truth during the contested case hearing.

Mr. Anderson suggested the Commission call a special meeting and bring in those individuals they feel did not tell the truth ... Commissioner White asked if he was suggesting another contested case hearing. Commissioner Peyton stated the Commission was not going to go that route again. Mr. Anderson stated that he felt the Commission would negate the agreement between Polk County and RACI, and that the issue would return to a contested case status.

Commissioner Hansen asked if a special meeting would have to take the nature of a contested case hearing. Chair Sealock indicated that it would not. Commissioner Allen

stated that if a special meeting were held, she wanted it to be a face-to-face meeting rather than a telephonic meeting. Mr. Anderson asked Mr. Ketterer if he concurred with the special meeting. Mr. Ketterer indicated that he felt the Commission either needed to hold a special meeting, or RACI would need to postpone their annual meeting until after the Commission meeting. Mr. Ketterer suggested that RACI could postpone their annual meeting from Wednesday to Friday.

Commissioner Peyton stated that this was a losing battle. Commissioner White stated it was a losing battle if every time the Commission tried to take some action they are threatened with a lawsuit.

Commissioner Hansen asked if the Commission could make a motion to defer the issue subject to RACI being willing to change the date of their annual meeting. Commissioner Allen asked Commissioner Hansen to repeat his statement. Commissioner Hansen stated that he would move to defer the motion until and contingent upon RACI's willingness to alter the date of their annual meeting until after the Commission's November meeting. Chair Sealock asked Commissioner Hansen if he would be willing to add language regarding the deferral of approval of the bylaws. Commissioner Hansen stated that the motion on the floor had to be removed from the floor.

Commissioner Allen clarified that between now and the November Commission meeting, or at the November meeting, the Commission would be hearing from Mr. Spriggs. Commissioner Peyton stated that was his hope. Chair Sealock wondered if he would agree to appear. Mr. Anderson asked if the Commission had subpoena powers. Chair Sealock indicated they did. Mr. Anderson stated the Commission could subpoena him to appear.

Mr. Anderson informed Commissioner Peyton that he understood his concerns, but from an outsider's perspective, he feels the Commission is close to overstepping its boundaries. Commissioner White stated that the Commission is aware of the concerns, whom they are dealing with and knows what they were told during the contested case.

Commissioner Hansen moved to close the Executive Session. Commissioner Peyton seconded the motion. The motion carried unanimously.]

Following a brief Executive Session, Commissioner Hansen moved to defer the motion on the floor subject to RACI agreeing to postpone its annual meeting until after the Commission's November meeting, and defer any action on RACI/PM's request for approval of the revised Bylaws for RACI. Commissioner Allen seconded the motion.

Chair Sealock stated that she wanted to hear from Mr. Flynn before taking any action on the motion. Mr. Flynn stated that RACI could do that, but wondered what would happen if RACI agreed. Commissioner White advised him that the Commission would not be forced to remove a director that has taken office. He noted that in order for the Commission to defer action it would be necessary for RACI to confirm that RACI will not hold its annual meeting, nor recognize or seat any new directors until after the

November Commission meeting. Commissioner Hansen stated they could hold their meeting on Friday, November 21st.

Commissioner Peyton explained to Mr. Flynn that one of the issues in the contested case was whether the licensee was being controlled by someone other than the licensee. He noted that one line of questioning he pursued with at least two witnesses was whether Polk County had made any attempts to control how certain Board members had voted or acted within their capacity as Board members. Both witnesses indicated they had not, and that several had voted against what the County wanted, therefore, providing evidence of their independence and that the County was not exercising any control. He then asked if there were attempts to manipulate the situation by removing them from the Board or not reappointing them. Commissioner Peyton indicated that he focused on Mr. Spriggs as his term was due to expire. He noted that the answers received were satisfactory. The Commission reached a decision in the case based on the information received, and 30 days later, there is a completely different picture than presented in the contested case hearing. Commissioner Peyton stated that he would like to hear from Mr. Spriggs to determine what he was told about his reappointment, and when he was told that he would not be reappointed to RACI's board.

Mr. Flynn clarified that it was Commissioner Peyton's intent to question Mr. Spriggs at the November Commission meeting. Commissioner White asked Mr. Flynn if RACI was willing to defer its annual meeting until after the November Commission meeting. Mr. Flynn noted there was no legal problem in doing so, and was willing to do so if it would help move things forward. Mr. Flynn noted that Mr. Timmons was asking about the license applications. Commissioner Hansen clarified that his motion only deferred the request for approval of the Bylaws, the Commission would proceed with the other items. Mr. Palmer requested a few minutes for the Board members to caucus in the hallway. Chair Sealock granted the request. Upon RACI's return to the meeting room, Mr. Flynn advised the Commission that RACI would change the date of their annual meeting to occur after the November Commission meeting.

Chair Sealock asked Commissioner White if he was withdrawing his motion. Commissioner White stated that he was not, that action on his motion is being deferred. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-148)

Chair Sealock then moved to RACI/PMR&C's request for approval of the Lease of Facilities Known as Prairie Meadows Racetrack and Casino. Mr. Flynn indicated that he was available to answer any questions from the Commission.

Commissioner Allen stated that she had a question concerning Section 15 – Fire and Casualty, Destruction of Premises. The paragraph states that if the structure is destroyed or damaged in excess of 40%, it is the landlord's discretion whether or not the facility will be rebuilt. She asked what recourse would be available to RACI should such a situation occur. Mr. Flynn stated that the County was concerned about having to commit

to rebuild the facilities in 2001 if they were destroyed when faced with the gaming referendum to be held in 2002. He stated that should the County elect not to rebuild the facilities, he feels RACI would approach a neighboring county to determine whether or not they would be willing to have a licensee in that county.

Commissioner Allen asked how the parties had arrived at the 40% figure. Mr. Flynn stated that it was arbitrary, but not totally unique. He stated that he has seen higher and lower figures in other lease arrangements. The figure was negotiated between the two parties. Commissioner Hansen stated that he felt some zoning laws require a 50% clause requiring a building sustaining damage of at least 50% to be torn down.

Commissioner Peyton asked Mr. Flynn if the Proposal adopted by RACI on September 11, 1997 was a self-executing document as there are certain provisions that are not included in the lease. Mr. Flynn stated he felt the document was self-executing. There were two contingencies for it to go into effect: 1) It had to be approved by the Commission, and 2) RACI had to enter into a 5-year purse agreement with the horsemen. Both have occurred. Commissioner Peyton asked if RACI had received some acknowledgment from Polk County that the document was in effect.

Ms. Ovrom stated the document is incorporated by reference into the lease, and is attached to the lease as an exhibit. Polk County considers it an integral part of the lease, but did not feel it was necessary to restate the entire document in the lease. Commissioner Hansen noted the proposal is referenced in Sections 22 and 33, but asked why it was not referenced in the second paragraph of the preamble to the lease.

Mr. Flynn stated that he felt the Proposal was self-executing, Polk County has passed a resolution accepting it, and there is a signed lease that incorporates the Proposal. He stated that as counsel for RACI, he is comfortable that the Proposal is binding on both parties, and that RACI would have a right of enforcement should the County attempt to do something outside the scope of the Proposal.

Commissioner Hansen stated that he wanted assurances from both parties for the record that the lease does fully embrace the Proposal, and that is what he was hearing from both parties.

Commissioner Peyton stated that he had some concerns regarding Paragraph 3 – Payment of Net Receipts, the distribution of net receipts for public purposes that Polk County is entitled to. He feels the inclusion of this paragraph appears to make it a part of the lease, and these payments are not rent. He asked if there was a breach of this part of the agreement, would that provide Polk County with the means to terminate the lease or would they have a right of action to get payment of those receipts. Commissioner Peyton wondered if a sale of the facility would be subject to the lease, and noted that those distributions can only be made to a qualified recipient. He feels the parties have gone too far by incorporating this portion of the Proposal in the lease agreement; however, he noted the language is virtually identical to that in the Proposal. It is his contention that

this provision does not need to be included in the Lease as it is set forth in the Proposal, which is incorporated into the Lease by reference.

Mr. Flynn stated that Commissioner Peyton was raising an issue he had raised. He felt it did not need to be included in the Lease; however, the Board of Supervisors felt very strongly about this provision being set forth in the Lease. Mr. Flynn agreed that the payments are not rent and are not part of the lease. If RACI has the net receipts called for, Polk County will receive them. He noted that Polk County would have a right of action against RACI if they don't pay them the net receipts as set forth in the Proposal. Mr. Flynn stated that if the facility were sold, the distribution of net receipts is unique to the County as a qualified beneficiary. He does not feel anyone else would expect to receive the net receipts, nor would the Commission allow that to occur.

Commissioner Peyton stated that he did not want Polk County to be able to use the termination of the lease as leverage should the parties have a disagreement concerning the net receipts. He feels it should be contained in its own document if the County is not comfortable with the Proposal as a self-executing document. Commissioner Peyton stated that he does not want this provision to be a part of the Lease agreement for the facility. There is a $12 million lease payment for the use of the facility, and if it is any higher, then the Commission would question whether or nor it was fair rent.

Ms. Ovrom stated that payments of net receipts are included in other leases She noted that she had studied several of them and attempted to incorporate some of the provisions in those leases into this Lease. She stated that RACI is protected because the provision does refer to "net receipts".

Commissioner Peyton asked what happens if the parties have a dispute as to what constitutes "net receipts", or accounting methods. He asked what is considered "net receipts".

Ms. Ovrom noted that the provision includes the definition of "net receipts" as set forth in the Code, which is as follows: " ... net receipts after payment of all reasonable expenses, charges, taxes, fees and deductions allowed by law." They also included payments for leasehold improvements, and the purchase of new model or replacement slot machines and other capital items referenced in Paragraph 23.

Commissioner Peyton reiterated that he did not feel this provision should be included in the Lease. He asked what the remedy would be if a dispute occurred over this provision. With the distribution provision included in the Lease, it becomes part of the rent. Ms. Ovrom stated that if there was a dispute concerning the definition of "net receipts", she felt it would go to the arbitration provision, which is to be used to resolve any dispute involving the interpretation of the Lease. However, she noted that if the end of the first quarter came and RACI informed Polk County they were going to give them 10% versus 15%, then she feels it would be an issue because Polk County is entitled to the money.

Commissioner Peyton stated that he disagreed with Ms. Ovrom's comment. The net receipt payments have nothing to do with the facility, that is a distribution of net receipts under the statute to be used for charity, educational or civic purposes. He reiterated that this portion of the County's distributions are not part of the rent. Ms. Ovrom stated that she is not calling the payment rent, but would like to have it as an obligation under the Lease. Commissioner Peyton stated that by including this provision in the Lease, Polk County is making it part of the rent, which he does not feel is appropriate. It is a distribution subject to the agreement reached between the parties. He does not object to the parties setting this distribution forth in a separate agreement.

Ms. Ovrom, noting that the Proposal is incorporated into the Lease by reference, she did not feel it was any big deal to include the distribution of net receipts in the Lease. Commissioner Peyton advised Ms. Ovrom that the provisions not directly related to the facility are not a basis for terminating the Lease. In his opinion, everything comes back to what the fair rent value is of the facility. He noted that the Commission was told the rent would be $12 million, which they felt was a little high, but that there was justification in that it was close to the fair market value. Additionally, the Commission was informed there would be other distributions that would comply with the statute, the distribution of the net receipts. Commissioner Peyton stated that by including the distribution of net receipts in the Lease, Polk County has elevated the distribution to the same level as the rent payments. He can envision a subsequent landlord indicating that he is entitled to the payments because it is set forth in the Lease, when in fact they may not be entitled to receive them under the statute. Ms. Ovrom stated that she felt it was understood that any buyer would have to comply with the statutes and legal requirements.

Commissioner White stated that he agreed with Commissioner Peyton's comments. He stated that he had looked at Exhibit S submitted by the County in the contested case hearing, and the net receipt distributions were clearly set apart from the rent payments. In his mind, it raises the issue of who will receive these payments if the facility is sold – are they rent payments to Polk County or would they go to the new landlord? Commissioner White stated the inclusion of the paragraph in the Lease raises all kinds of problems. He noted that if Commissioner Peyton makes a motion to approve the Lease by striking this paragraph (3), he would second the motion.

Commissioner Peyton indicated he had the same concerns regarding Paragraph 21 – Landord's Lien and Security Interest - of the Lease, as he did Paragraph 3. Paragraph 21 states in part: "Landlord may proceed at law or in equity with any remedy provided by law or by this Lease for the recovery of rent or other distributions or for termination of this Lease because of Tenant's default in its performance." Commissioner Peyton noted that he also had concerns about Paragraph 26 – Inspection of Premises and Books and Records, which would allow an authorized representative of the County, as designated by the County Manager, to have access to the leased premises and review the Tenant's books and records. He stated that there is no reason for this paragraph to be included in the Lease unless Paragraph 3 (Payment of Net Receipts) is included in the Lease. In his opinion, the only reason the County should have the ability to review RACI's records is to determine whether or not they are complying with the terms of the Lease.

Ms. Ovrom indicated she had included the provision in the Lease so the County would be able to determine whether or not RACI would be able to make the rent payment, as well as making the net receipt distributions. She noted that this is not an unusual provision, and is in accordance with Iowa law, subject to the exceptions of the Open Records Law.

Commissioner Peyton noted that it is unusual in the sense that the County could receive a copy of RACI's audit to determine whether or not they can make the rent payments and distribution of net receipts. He feels it is much more open-ended than that.

Ms. Ovrom stated that she had modeled this language after language contained in another licensee's agreement approved by the Commission.

Mr. Flynn stated that he was not overly concerned about this provision. He noted that RACI was not going to give Polk County any records that would not be available to anyone else under the Open Records Law.
Commissioner Peyton noted there is a history of public comments about how money is spent by RACI/PMR&C. He indicated the situation is past that point, and he does not want to see any more comments.

Commissioner White asked Mr. Flynn if it was possible for Polk County to designate someone who is interested in purchasing the facility as the authorized representative to review the books. Mr. Flynn reiterated that Polk County would not have access to any records that would not be available to them under the Open Records Law. Commissioner White asked Mr. Flynn if he felt RACI could protect any proprietary information. Mr. Flynn indicated they could. Commissioner White stated that he is attempting to separate RACI from Polk County, and wondered why it was necessary for Polk County to have access to the records. Mr. Flynn again advised Commissioner White that Polk County would not have access to any information that was not available to anyone else.

Commissioner Peyton stated that his last concern with the Lease dealt with Paragraph 41 – Contingencies. This paragraph states that if the Landlord, not RACI, does not get a closing agreement procedure from the IRS before December 31, 1997, that the parties will proceed under the terms of the current Operating Agreement. Mr. Flynn stated that the parties would be back before the Commission if this situation arises; however, it is RACI's intention to start making rent payments on January 1, 1998. He noted that bond counsel has assured Ms. Ovrom and him that this is a formality. The procedure is new under the Internal Revenue Code, and does not know of any other entities that have invoked it or used it before. Bond counsel is concerned about how fast the IRS will react. Commissioner Peyton stated that the Operating Agreement no longer exists as of September 13, 1997 per the Commission's Ruling in the contested case hearing. Ms. Ovrom stated the parties had to somehow comply with IRS regulations, and this was the best the parties could do. She noted that if the parties do not successfully complete the closing agreement procedure, Polk County would be left with no agreement with RACI.
Commissioner Peyton stated that he would be very surprised if the procedure would be completed by December 31, 1997. Commissioner Peyton stated that should the parties have to return to the Operating Agreement, he would assume that Polk County would

have no problem removing some of the objectionable provisions contained in the Operating Agreement; that the Operating Agreement would be rewritten to reflect the Proposal agreed to by all parties. Mr. Flynn stated that in his opinion, the parties would be operating under an Operating Agreement that has been amended pursuant to the Commission's ruling. - Ms. Ovrom stated that she could not agree to unknown amendments to the Operating Agreement, but does understand that the Commission would have concerns about reverting to the old Operating Agreement and would be addressing those concerns.

Commissioner White stated that the Stipulation of the Commission stated that the Operating Agreement would be canceled as of December 31, 1997. There were no caveats or exceptions allowed.

Commissioner Peyton asked who would receive all of the proceeds if the closing agreement procedure is not completed until July 1, 1998. Ms. Ovrom indicated it was her understanding the parties would operate under the provisions of the Lease beginning January 1, 1998, even if the IRS has not ruled, assuming the parties will get the answer they think they will get from the IRS. Mr. Flynn stated it was his thought that the parties would operate under the terms of the Lease as if it was in effect, although it technically would not be until an answer is received from the IRS. RACI will pay any penalty set by the IRS. Commissioner Peyton stated that he felt the current Operating Agreement would have to be amended from a legal perspective, particularly with respect to the distribution of net receipts. Ms. Ovrom stated that Polk County was not intending to take any of the approval actions as stated in the Operating Agreement this fall.

Mr. Flynn stated that he felt the Lease could be approved by the Commission with the understanding that the parties will proceed under the terms of the Lease as of January 1, 1998, even if the parties don't have the closing agreement procedure completed with the IRS, or under the Operating Agreement as amended to conform with the terms of the Lease.

Chair Sealock asked Commissioner Peyton to make a motion. Commissioner Peyton moved to approve the Lease Agreement between RACI and Polk County, conditioned on the following:

- That Item 3 of the Lease of Facilities Known as Prairie Meadows Racetrack and Casino should be handled in a separate agreement, as well as the language in Paragraph 21 that refers to other distributions, and

- In the event the closing agreement procedure contemplated in Paragraph 41 is not completed successfully with the Internal Revenue Service by December 31, 1997, that the current Operating Agreement shall be amended to the Commission's satisfaction effective January 1, 1998, to remove all of the County's control and to reflect the financial arrangements of the parties as reflected in the Lease.

Commissioner White seconded the motion. Hearing no further discussion concerning the Lease of Facilities Known as Prairie Meadows Racetrack and Casino, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-149)

Chair Sealock then moved to RACI/PMR&C's Application for Renewal of License and Approval of Live and Simulcast Racing Dates for 1998. Mr. Farinella and Tom Timmons, Vice President of Operations and Assistant General Manager, made the presentation and were available to answer questions. Mr. Timmons advised the Commission that PMR&C was successful in securing a Grade III Stakes race, the Cornhusker that had been held at Aksarben previously. It was one of the best-graded stakes races, and had four previous graded stakes winners in the race. He noted that PMR&C had made great strides in their simulcast program this year. They averaged over $600,000 per performance handle, and made a big push to attract the race books in Nevada to take their signal, and were successful. He noted that purses went from $4.4 million in 1996 to about $10.8 million in 1997, including Iowa supplements.

Commissioner Peyton stated that he had some questions concerning the Grants Advisory Council Proposal submitted at the September Commission meeting. During that meeting, the Commission expressed concerns that the committee represents a cross-section of a broader community, not just Polk County. He asked if this proposal for a grants committee had been adopted. Mr. Farinella indicated that it had not. The Grant Advisory Committee is still taking this recommendation under advisement, and have not formally moved to adopt this proposal. He noted that Mr. Palmer, who is in charge of the Grants Advisory Committee, was present and could address questions regarding this particular issue.

Mr. Palmer stated that the Grants Advisory Committee has adopted three different proposals, one for a 15-member board, one was for 18, and another was for 21. The RACI Board adopted a resolution that there will be no less than 15 people on the Grants Advisory Committee. The Grants Advisory Committee just completed the last grant distributions for the year, and have not had an opportunity to adapt and increase the Board at this time. It is anticipated this will be accomplished by their December meeting. The new board will have representation from the counties surrounding Polk County.

Commissioner Peyton stated that he did not feel any action was taken at the September meeting that could be considered an endorsement or approval of a 5-year plan that was presented during the contested case hearing. He noted it is RACI's plan, and all items included in that plan, including capital outlay and purses, are still subject to the Commission's approval. He indicated he was making these statements as clarification so there would be no misunderstanding that the Commission had given approval by adopting some of the technical revisions to the arrangement between Polk County and RACI.

Mr. Farinella stated that was RACI/PMR&C's understanding as well. He indicated they will be presenting some street revisions and building requirements at the November Commission meeting. He noted that in the preparation of the 5-year plan and all of the

financial ramifications contained therein, that it is part and parcel to the leasehold improvements and the positioning of the business.

Commissioner White asked if the Commission would see a plan of operation for the future and how that will relate to the capital improvement plans they will be submitting for Commission approval. Mr. Farinella indicated part of their presentation next month would be to outline their financial goals for 1998. RACI had planned to have the goals approved by their Board prior to the next meeting, but that will not occur now. Commissioner White advised Mr. Farinella that the Commission was only requesting that RACI postpone their annual meeting, there is nothing to prevent the current Board from meeting to review and approve the financial plans and goals for 1998.

Commissioner White noted that some individuals have stated that PMR&C has an opportunity to develop into a regional horse track and make an impact on the industry because of the slot machines and problems other tracks are experiencing. Mr. Farinella stated that he felt PMR&C had already seized the opportunity. He noted that several staff members had been questioned by other racetrack operators at a Las Vegas conference the previous week as to how PMR&C would position itself in the industry based on developments in the racing industry.

Mr. Ketterer noted that Mr. Farinella and Mr. Timmons had met with Ms. Vanderloo and him the previous week to discuss the 1997 live race meeting and some concerns by staff members. He asked the Commissioners to incorporate in their motion a provision that PMR&C staff would work with IRGC staff to address those concerns to staff's satisfaction prior to the season approvals going before the Commission in January.

Commissioner Peyton stated that he had some questions concerning the five-year plan for capital expenditures. He advised PMR&C that he does not like the idea of them spending $60 million for additional facilities on property owned by someone else. Mr. Farinella informed Commissioner Peyton that the $60 million is not all for leasehold improvements – the leasehold improvements are only about $30 million. The balance will be used to improve assets that belong to RACI. Mr. Timmons, noting that Commissioner White had asked about PMR&C positioning themselves in the industry, advised Commissioner Peyton that some of the improvements, such as a turf track and additional barns, are necessary if PMR&C is going to grow within the race industry. Commissioner Peyton advised that he understood that, but suggested that if PMR&C is going to build something to house administrative offices, those offices would not necessarily have to be located on land owned by Polk County. He indicated that he would feel more comfortable if the facilities could be built on land owned by RACI since the facilities would be built with RACI's funds. He noted that at some point RACI could be forced to relocate all of its facilities. He indicated he had some skepticism about building some of the improvements that would necessarily have to be on Polk County's property.

Commissioner White stated that he concurred with Commissioner Peyton. He agreed that anything that could be built off-site should be so that RACI's property would belong to them rather than the landlord. He voiced his concern that RACI was not building up

any kind of a reserve to buy land of their own versus continuing to put money into the County's property. He stated that RACI needs to establish some independence from Polk County at some point.

Commissioner Peyton stated that at the end of the Lease period, RACI would either have to renegotiate the Lease or buy the facility, and asked them what would be used to determine the fair market value of the facility, which they have paid to improve. In his opinion, RACI would end up paying for everything a second time. Mr. Farinella advised Commissioners Peyton and White that the matter would be researched.

Commissioner Peyton noted that the Order from the contested hearing required RACI to give at least 50 cents on the dollar to other charitable organizations for every dollar given to Polk County. He advised Mr. Farinella that was a very critical element of the resolution. He reminded them they are dealing with public funds; they don't belong to Polk County. Commissioner Peyton stated that RACI should make a diligent attempt to meet that goal because that money was not included in the 5-year plan as presented. Mr. Farinella advised Commissioner Peyton that RACI felt the same way.

Commissioner Peyton indicated that he feels the license is a privilege, not a right, which is stated in the Commission's Rules. He wanted the records to show that the license is issued for a specific period of time, and the licensees should not expect the license to be automatically renewed. The license is subject to the review of the Commission and their satisfaction that the licensee has met the requirements of the statute. Mr. Farinella and Mr. Timmons stated they understood Commissioner Peyton's comments.

Commissioner Allen asked Mr. Timmons about the contracts submitted for the purchase of give away vehicles. She noted the documents indicated the contracts are expected to be in excess of $50,000, but no figures were submitted for the previous year. What was the value of the cars given away last year?

Commissioner Hansen stated that he also had some concerns regarding the contracts submitted by PMR&C, but the contracts were submitted with the racetrack gaming enclosure license application. He asked if the renewal applications were going to be voted on together or separately. It was determined they should be dealt with separately.

Chair Sealock called for a motion regarding PMR&C's Application for Renewal of License and Approval of Live and Simulcast Racing Dates for 1998. Commissioner Allen moved to approve PMR&C's racetrack license application for 1998. Commissioner Hansen seconded the motion.

Commissioner Peyton advised Chair Sealock that he wished to amend the motion on the floor by substituting the following motion: That RACI be granted a conditional license for a period of one year commencing January 1, 1998 and ending December 31, 1998 for the operation of a racetrack for live and simulcast racing dates subject to the following:

- That the Bylaws issue be resolved;

- That the Grants Advisory Proposal, as presented, will ultimately be adopted to include representation of individuals outside of Polk County;
- That the changes to the Lease Agreement that were conditioned to the approval of the Facilities Lease Agreement be made;
- That there be substantial progress toward the Order which required diligence to achieve the $37.5 million of charitable contributions to organizations other than Polk County over the next five years; and
- That the licensee or applicant address adequately the staff's concerns conveyed to them.

Chair Sealock asked Commissioner Peyton if his motion included approval of the Bylaws. Commissioner Peyton advised that it did not, that the motion called for the issues surrounding the Bylaws to be resolved. He noted that it is possible the issues could be resolved without any changes to the Bylaws.

Commissioner Hansen seconded the motion as amended. Chair Sealock stated that it had been moved and seconded, as amended, that the Application for Renewal of License and Approval of Live and Simulcast Race for 1998 be approved. She called for any other discussion.

Commissioner Hansen clarified that the substitute motion would delete the motion previously on the floor.

Hearing no further discussion, Chair Sealock called for a roll call vote. The motion carried unanimously. (See Order No. 97-150)

Chair Sealock moved to RACI/PMR&C's Application for Renewal of Racetrack Enclosure Gambling License.

Commissioner Allen returned to her question regarding the contracts for the give-away vehicles. There was a lengthy discussion as to the process followed by PMR&C in their bidding process and the value of the various vehicles used as prizes. Commissioner Allen was informed that, unlike the other licensees in Iowa, PMR&C does not allow the patron a choice between cash and the vehicle. The patron has to accept the vehicle. PMR&C purchases the vehicles in blocks of six. Mr. Farinella stated that various vehicles are used to attract customers to those particular games, and range in price from $15,000 to $35,000.

Ms. Vanderloo stated PMR&C had submitted an addendum to their purchasing policy regarding the purchase of these vehicles that was not included in their renewal application. She felt this would be easier than trying to establish a rule that would only apply to this licensee. When the contracts were received, Ms. Vanderloo indicated that she advised PMR&C they needed to establish a procedure for the purchase of the vehicles that could be reviewed should questions arise.

Commissioner Peyton moved that the Application for Renewal of Racetrack Enclosure Gambling License commencing January 1, 1998 and ending December 31, 1998, be approved.

Commissioner White asked Commissioner Peyton if he was going to apply the same conditions to this license as the racetrack license. Commissioner Peyton stated that it was not necessary, as the racetrack enclosure license is contingent on the licensee having the racing license.

Commissioner Hansen noted that a majority of the vendor contracts listed $50,000 amount, while last year's expenditures ranged from under $50,000 to in excess of $650,000. He did not feel showing $50,000 was responsive to the Commission's request for better information regarding possible expenditures with vendors. He requested that the approval be conditioned upon the staff receiving additional information regarding the contracts. Commissioner Peyton indicated he was willing to incorporate the request into his motion.

Chair Sealock asked Commissioner Hansen if he was seconding the motion. Commissioner Hansen stated he was.

Hearing no further discussion regarding RACI/PMR&C's request for Approval of the Racetrack Enclosure Gambling License, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-151)

Chair Sealock moved to Iowa West Racing Association/Bluffs Run Casino (IWRA/BRC) request for Approval for Renewal of Racetrack Enclosure Gambling License. Tony Payne, Executive Director of IWRA, advised Chair Sealock there were several individuals available to answer any questions the Commission may have regarding the license application.

Barry Sevedge, Director of Operations for BRC, advised the Commission that they had been trying to decide how to repair the turnouts and end walls of the kennels. The original bids covered a wide range because the contractors saw different ways of correcting the situation. He noted the last bid they received was $38,000, and they intended to use that contractor. Now, they have determined the best way to repair the walls will increase the cost to $76,000. Mr. Sevedge indicated the contract had not been submitted for Commission approval because they thought it would be less than $50,000. As that is no longer the case, he stated he was asking for approval to begin the project so that it could be finished prior to winter, and the contract will-be submitted at the November meeting.

Chair Sealock asked the other Commission members if they had any objections to the above proposal. She noted this is not a formal action item. Hearing no objections, she advised Mr. Sevedge that BRC could proceed with the project.

Commissioner Hansen commented that several of the submitted contracts did now show an amount that BRC anticipated spending with the vendors. He asked that any motion, assuming it would be for approval, be conditioned that BRC correct the contract submissions to show an amount that is more indicative of the business they will be doing with the vendors. He also commented on the out-of-state food purchases, noting that one contract is for $2.8 million. Additionally, he noted that BRC had provided an explanation for using an out-of-state vendor on just 12 of those contracts.

Commissioner Hansen returned to the out-of-state food contracts: Pegler for $2.8 million, Midwest Foods for $800,000, and lesser amounts to a couple of other food distributors. Mr. Sevedge advised Commissioner Hansen the reason Pegler has the bulk of the food purchases because of the buying service BRC uses for the majority of their food purchases. Pegler is the vendor currently used by the buying service; however, that is subject to change based on negotiations between the service and food distributors. The other vendors are used to purchase other provisions other than those covered by the agreement with the buying service.

Commissioner Hansen noted that Dubuque Greyhound Park & Casino's (DGP&C's) application contained a high percentage of Iowa purchases compared to BRC's high percentage of out-of-state purchases. He felt the licensees were moving toward more Iowa purchases.

There was further discussion of the Pegler contract. Commissioner Hansen reiterated his problems with BRC's contract submissions. Mr. Sevedge advised Commissioner Hansen that for contracts showing a zero dollar amount, BRC has an ongoing business relationship with the vendor, but does not anticipate doing any business with that particular vendor in the upcoming year. Commissioner Hansen indicated he was willing to delegate compliance to staff. Mr. Sevedge indicated that BRC misunderstood what needed to be submitted with the renewal application. He indicated they would work with staff to get into compliance.

Commissioner Peyton asked Mr. Sevedge if BRC understood, that according to Iowa law and Commission Rules, that casino gaming at a racetrack enclosure is a privilege, not a right, and that the burden of establishing the qualifications for retaining the license is placed on the licensee/applicant. Mr. Sevedge indicated they did. Mr. Payne indicated IWRA was also cognizant of the fact.

Commissioner Hansen moved to approve IWRA/BRC's request for Approval of the Renewal of the Racetrack Enclosure License subject to staff approving the contract submissions. Commissioner Peyton seconded the motion.

Commissioner White, noting that IWRA is the license holder, asked Mr. Payne who makes the decisions regarding the charitable grants. Mr. Payne indicated that the Iowa West Foundation (IWF) Board makes the decisions. Commissioner White then asked if IWRA was receiving funds from Ameristar and Harveys. Mr. Payne indicated Ameristar and Harveys pay $1.50 per passenger to IWRA. These funds are turned over to IWF at

the end of each month for investment. IWF receives approximately 100 grant applications every six months. The IWF Board of Directors Grants Committee determines which grants will be funded. Commissioner White asked what role IWRA plays in the grant process. Mr. Payne indicated IWRA was not involved in the process. Commissioner White asked the amount of the grants awarded in 1997. Mr. Payne stated that approximately $9 million would be awarded.

Commissioner White asked Mr. Payne what role Ameristar and Harveys have been given in the grant process. Mr. Payne advised that they not had been involved in the process up to this point, but that he had recently visited with both Ameristar and Harveys about participating in the process. Mr. Payne noted they have received conflicting information from the Commission as to who should be making the decisions regarding grants – the license holder or the riverboats. He indicated IWRA is willing to comply, but would like some clarification. Mr. Payne stated that he had advised Ameristar and Harveys that they would be provided with packets containing information about the fall grant application and would like their input. Commissioner White asked why they were being provided with packets of material versus being asked to attend the grant advisory committee meetings.

Chuck Smith, President of IWRA, stated they felt it was best that none of the out-of-state gaming interests be included in determining the distribution of the funds. He noted that during a planning retreat in January, IWRA anticipated receiving approximately $3 million in revenues from each riverboat, as well as BRC. These are the funds used for the grant distributions with the balance placed in a foundation to be used in future years.

Chair Sealock indicated that the Commission has heard from Ameristar and Harveys regarding this issue. Noting that a representative from Ameristar was present, she asked if IWRA would agree to letting them speak to this issue.

Mr. Terp came forward to answer any questions the Commission may have relative to their representation in the grant process. Commissioner Peyton asked if Ameristar was satisfied with the ability to be able to review the grant application packets. Mr. Terp indicated it was a step in the right direction; however, Ameristar is still concerned as an operator, and have been even before opening, about having input about where the money is going. He noted that having the ability to review the grants is only one step, but to him the more important issue is relative to policy and participation in the board meetings. Ameristar does have some philosophical differences as to how the money should be given away, the amount that is distributed, and recognition as to how the money is being given, etc. Mr. Terp indicated that Ameristar would like to participate in the grant advisory committee meetings, as they can offer discussion and some different insights as to how the money might be distributed in western Iowa to help several different communities, not just Pottawattamie County. He noted that Mr. Payne had advised him that if Ameristar did have some specific desires regarding their grants, they should advise him of those desires and he would pass them on to the Board. Mr. Terp indicated Ameristar appreciated the offer, but noted they would like to be present at the committee meetings when the decisions are made, even though they would not have a vote. They

would like to feel they are in a partnership between IWRA and Ameristar. He noted they would like to have a relationship with IWRA similar to what The President has with their non-profit organization. Mr. Terp noted that one of the concerns Ameristar has is that allegedly IWRA is receiving $3 million from each of its licensees, but when brochures and promotional material is printed, it shows that 72% of the money is coming from BRC, 15% from Harveys and 13% from Ameristar.

Commissioner White asked Mr. Payne what the objection was to allowing representatives from Ameristar and Harveys to attend meetings if they agreed they would not have a vote. Mr. Smith indicated IWRA was not sure what the Commission wanted, that maybe they had read something into the RACI/PMR&C situation that wasn't there. He stated that he felt the Commission was opposed to an outside entity controlling the licensee's statutory distribution of funds. He asked if the Commission wanted the operators involved in the process.

Chair Sealock asked Mr. Smith about allowing Ameristar and Harveys to appoint a member to the grants advisory committee to allow for input, but would not have any control. She felt the Commission's concern with RACI/PMR&C was with control.

Commissioner White stated that the ultimate decision as to the distribution of funds lies with the licensee, but there is nothing to prohibit input from an outside individual or source. Mr. Smith noted that IWRA has established two other advisory committees.

Commissioner White noted that it was not unreasonable for Ameristar and Harveys to expect some recognition for their contributions to the charitable funds that are being distributed by IWRA. Mr. Payne stated that he has made an attempt since joining IWRA to broaden the recognition given when funds are distributed. Mr. Payne again asked for clarification as to whom was to distribute the charitable funds – the license holder or the operator. He was advised that it should be the license holder with input from its licensees. Chair Sealock recognized that IWRA has a unique situation in that it is the license holder for a racetrack with a casino, and two riverboats.

Commissioner White asked Mr. Ketterer if the Commission had some approvals coming up in the spring. Mr. Ketterer advised him that the renewal applications for the riverboats are due in the Commission's office on December 31st, and are acted on at the March Commission meeting. Commissioner White indicated that would allow the Commission to determine whether or not any progress had been made in resolving this issue.

Commissioner White advised IWRA/BRC that he had not changed his opinion of their relationship with AIM for all of the reasons set forth at the September Commission meeting.

Hearing no further comments regarding IWRA/BRC's application, Chair Sealock requested a roll call vote. The motion carried on a 4-1 vote, Commissioner White voting no. (See Order No. 97-152)

Chair Sealock moved to Dubuque Racing Association/Dubuque Greyhound Park & Casino's (DRA/DGP&C) request for Approval of Renewal of Racetrack Enclosure Gambling License. Bruce Wentworth, General Manager of DGP&C, came forward to answer any questions the Commission might have regarding the application. He advised the Commission that there was an article in The Des Moines Register's Today section about the greyhound adoption program at the track, and encouraged them to read it. Chair Sealock noted that a copy of the article had been provided to them.

Commissioner Peyton asked Mr. Wentworth if he and DRA's Board understood that the operation of casino games at a racetrack enclosure is a privilege, and not a right. Mr. Wentworth stated that he understood that from a corporate level, that the Board is aware of the responsibility and he also understands it from a personal level. Commissioner Peyton indicated that he had not been asking this question of each licensee to intimidate anyone, but stated that he feels very strongly that the granting of a license is a privilege that has to be earned by the licensee.

Commissioner Hansen complimented DGP&C on their 84.95% purchases with Iowa vendors for the year to date, noting they are located in a river town on the border. He noted that 86% of their staff lives in Iowa. Commissioner Hansen moved to approve DRA/DGP&C's Application for Renewal of their Racetrack Enclosure Gaming License. Commissioner White seconded the motion.

Hearing no further discussion, Chair Sealock called for a roll call vote. The motion carried unanimously. (See Order No. 97-153)

The Commission took a short break to allow Clarke County Development Corporation/Southern Iowa Gaming (CCDC/SIG) to set up their presentation regarding their application for a riverboat license in Osceola, Iowa. Jim Schipper, President of CCDC, advised the Commissioners they had been provided with handouts of the information that would be presented to them. He introduced the following individuals who will also be addressing various aspects of the application: Bill Grace, President of Southern Iowa Gaming; Bruce Schmitter; Larry Seckington, Gary Vos, President of Gaming for the Frontier Riverboat Casino in St. Joseph, MO; Paul Girvan, representing Urban Systems who performed the feasibility study supporting the project; Fred Diehl, Mayor of Osceola; and Dr. Fred Wood, representing the Osceola Water Board.

Mr. Schipper advised the Commission that the project has been named Lakeside Casino and Hotel. He noted that CCDC had been organized over 30 years ago to foster economic growth in Clarke County and the surrounding area. Studies have shown that southern Iowa has the lowest income in Iowa, and they need to find new and different economic activities to create jobs.

Mr. Schipper stated there were a number of benefits and enhancements in the proposed project that were lacking in previous proposals: a new interstate access off I-35, significantly expanded portside and land-based development, increased income to the community, and most important, a financially sound project.

The land-based development will include a conference center, 60-room hotel, restaurants, and a recreational vehicle park. The Lakeside Conference Center, in addition to supporting the casino, will bring convention and tourism revenues into the area, as well as provide a meeting location for area groups.

The economic study projected 720 full and part-time jobs with an annual payroll of $14.75 million per year. These jobs will help the area diversify and not depend on one industry. The average job will pay approximately $20,000 per year plus benefits. This is approximately $6,000 higher than the current jobs available.

The proposed project will result in significant new revenue for the local government and non-profit organizations. It is anticipated that CCDC will receive approximately $601,125, which is significantly higher than they would have received under the previous proposals. Additionally, 20% will be given to the South Central Iowa Foundation to benefit five area counties: Clarke, Union, Decatur, Ringgold, and Lucas. The Dekko Foundation, which supports charitable causes in these counties, will match CCDC contributions dollar for dollar. It is their intent to establish a permanent resource of at least $1 million to benefit the south central region for years to come. The remaining $480,000 can be used for a wide variety of projects and programs.

Mr. Grace explained the project in detail. He indicated that CCDC/SIG had attempted to address all of the Commission's concerns with the previous proposals: access to the casino and the safety of patrons in reaching the facility, and visibility from the interstate. The project will cost $45 million, and will be 110,000 square feet. It will include an entertainment complex consisting of 47,500 square feet, a hotel with 31,000 square feet; and the casino will have 32,000 square feet. The RV Park will be the only one he is aware of between Des Moines and Kansas City. Mr. Grace stated that slips will be added to the existing marina and develop the trails surrounding it.

The entertainment center will consist of two floors. The first floor will consist of a receiving area, storage, administrative offices, banquet storage, freezers and coolers. The only area open to the public on this floor will some hotel rooms which will open directly onto the lake. The other two floors of the hotel will be above this area. There will be two entrances – one enters directly into the conference center and hotel, the other enters into the buffet, steakhouse and cocktail lounge.

The convention center will seat 500 people at round tables, and over 900 auditorium-style. It has a stage for live entertainment. The center can be broken down into five separate meeting rooms. To accommodate the convention center, the hotel will consist of 20 standard rooms and 40 upscale rooms. Land is available to add another 60-room hotel at a later date if the need arises.

The actual riverboat will be built from components on site. The main facility will be 100' by 200' and will have 32,000 square feet of usable space for the casino, 28,800 for gaming space. The casino will have 40 table games and 850 slot machines.

Mr. Grace assured the Commission the riverboat would not have a problem cruising the lake. The boat is designed with a 6' draft. He provided the Commission with the layout of the riverboat.

Mr Girvan, from Urban Systems who conducted the feasibility study for the area, stated that it is estimated the casino will generate 930,000 gaming visits per year from the local gaming market, with a win per visit of $42. It is expected the tourist market will generate approximately 48,090 gaming visits per year with a win per visit of $54. The overall picture is 979,000 visits per year, with a win of $41.7 million.

Mr. Schmitter addressed the financial structure of the project. Of the estimated $45 million cost of the project, the principals of SIG will contribute $10 million in equity with the remaining $35 million being long term debt. They anticipate the first year revenues to exceed $42 million. It is anticipated the project will generate over $1 million in gaming taxes in the first year of operation. Of that amount, the non-profit will receive in excess of $600,000, the city and county will each receive in excess of $200,000. Osceola will also receive in excess of $500,000 via lease payments. The Osceola Water Board will also received $150,000 for the lease of a portion of the lake. The State of Iowa will receive $7.1 million in gaming taxes, and the Gambling Treatment Program will receive $120,000. It is anticipated the payroll will have a $76 million impact during the first five years of operation.

Mayor Diehl addressed community support for the project, and the local economy. He noted that Clarke County would be holding another referendum in November. He stated there is very strong community support for the project. Mayor Diehl noted that the economy is better than it was a few years ago, but there is still a need to diversify the local economy.

Dr. Wood stated that the Water Board Trustees had entered into a lease with SIG for the use of West Lake because they feel it will improve their ability to provide high quality, low cost water to the local citizens. Their agreement calls for SIG to pay them $150,000 per year, or an increase of 20% in their total operating budget. The money will be used to keep the water system up-to-date. Additionally, the riverboat will have the latest and safest equipment to prevent any leaks and contain any mishaps that may occur. The boat will carry a $5 million pollution insurance policy to protect Osceola and the Water Board from any pollution-related costs. Dr. Wood stated that SIG has committed to provide hazardous material training to all of their employees as well as the local fire department personnel, which will allow city personnel to respond to any hazardous material spills in the area. This is a capability they currently do not have.

Dr. Wood stated that the Water Board has worked closely with the DNR to maintain the water quality. They have also had two outside firms review the project, and they have found little or no possibility of harm to the lake from the riverboat activity.

Mr. Schipper provided a brief summation of the project and urged the Commission to approve the application.

Chair Sealock thanked CCDC/SIG for an excellent presentation, and noted they had addressed all of her concerns from the previous proposals. She complimented CCDC/SIG on the quality of the application they submitted.

Commissioner Peyton noted there was some concern that the casino was actually located on the boat, not in the land-based development. He noted that the confusion has come up due to the name of the project – Lakeside Casino and Hotel. The name is a bit of a misnomer. Mr. Schipper advised him that the casino is on the riverboat. He noted that CCDC/SIG had not thought of that particular angle when naming the project, but will take it under advisement.

Commissioner Peyton noted that in previous applications, there were some residents around the lake who would have been affected by the project. He asked if they were being relocated, or how they would be impacted by this new project. Mr. Grace, using one of the slides, advised Commissioner Peyton that only one family could possibly be displaced because of the project. Mr. Ketterer stated that he felt Commissioner Peyton was talking about some residents that lived on the road leading into Argosy's project. Mr. Grace indicated that the current project would have very little impact on those properties.

Mr. Ketterer complimented Clarke County for proceeding with the referendum in November even though it wasn't required. He noted the Commissioners, as well as the office, receive letters from area residents voicing their opinion regarding the project. He feels the referendum will really put the issue of community support to rest for the Commission.

Commissioner Allen noted that the unemployment rate for the area was at 5.2% in December 1996. She asked about the benefits the employees would receive. Mr. Schmitter advised they would have vacation and sick leave, funeral leave, 401K, health and life insurance – all of the normal benefits. The benefits package will total about $2 million per year.

Commissioner Hansen noted that he had voted for Argosy's project last spring, but had to admit that he was wrong. He stated that he was overwhelmed by the improved proposal before the Commission from what was presented last spring. Commissioner Hansen advised the Osceola residents in attendance to work hard on the referendum, that they should not take passage for granted.

Mr. Schipper thanked the Commission for listening to their presentation, and requested the approval of the license application. He indicated CCDC/SIG is looking forward to the day they can host a Commission meeting at their facility.

Chair Sealock called for a motion to adjourn. Commissioner Hansen so moved. Commissioner Peyton seconded the motion, which carried unanimously.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
NOVEMBER 20, 1997

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, November 20, 1997 in the Auditorium of the Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa. Commission members present were Rita Sealock, Chair; Brad Peyton, Vice-Chair; and members Bill Hansen, Jackie Allen and Harold White.

Chair Sealock called the meeting to order at 8:30 AM, and requested a motion to approve the agenda. Commissioner Hansen moved to approve the agenda. Commissioner Peyton seconded the motion, which carried unanimously.

Chair Sealock then called for a motion to go into Executive Session for the purpose of receiving advice from legal counsel and DCI background investigations pursuant to Iowa Code Sections 21.5(c) and (g), and discussing personnel issues pursuant to Iowa Code Section 21.5(i). Jeff Farrell, Assistant Attorney General for IRGC, advised Chair Sealock that he did not have anything for Executive Session. It was also determined there would be no discussion of personnel issues. Commissioner Peyton moved to go into Executive Session for the purpose of receiving DCI background investigations pursuant to Iowa Code Section 21.5(g). Commissioner White seconded the motion, which carried unanimously.

Following Executive Session, Chair Sealock called for a motion to approve the minutes from the October 24, 1997 Commission meeting. Commissioner White stated that page 15 references a motion to go into Executive Session for the purpose of receiving advice from legal counsel. He noted a two-thirds vote of the Commission was necessary for an Executive Session to occur. As that was not the case, Commissioner White moved to approve the minutes of the October 24th Commission meeting with the inclusion of the minutes from the Executive Session referenced on page 15 of those minutes. Commissioner Peyton seconded the motion. Commissioner Hansen voiced his opposition to the motion. Following a brief discussion, Chair Sealock requested a roll call vote. The motion carried 3-2, Commissioners Hansen and Allen voting no. (See Order No. 97-154)

Chair Sealock moved to the Rules before the Commission under a Notice of Intended Action. Jack Ketterer, Administrator of IRGC, advised the Commission that there are no substantive changes to the rules, they are being moved to more appropriate areas in the rulebook. Jeff Terp, representing the Gaming Association of Iowa, asked the Commission to consider raising the limit of substantive contracts from $50,000 to $100,000 or by using a percentage of last year's revenues in order to reduce the burden of submitting contracts. Related party contracts would still be submitted. There was a brief discussion regarding the alcohol and drug testing rules. Mr. Ketterer advised the Commission a new subrule was being added regarding Wide Area Progressive slots. A brief discussion was held concerning subrule 491-13.12 concerning child support

payments. Commissioner Hansen moved to approve the rules under Notice of Intended Action. Commissioner Peyton seconded the motion. The motion carried unanimously. (See Order No. 97-155)

Chair Sealock moved to the agenda items for Racing Association of Central Iowa/Prairie Meadows Racetrack & Casino (RACI/PMR&C). The first item was request for approval of the revised Bylaws which was deferred from the October Commission meeting. The motion before the Commission is as follows: The proposed Bylaws of RACI be accepted with the following condition: That the Bylaws of RACI be amended at the commencement of the November 1997-1998 year to include a provision that requires the reappointment of all current Polk County appointees to the RACI Board of Directors for the maximum number of terms allowed in the Bylaws as amended from time to time, unless by the majority vote of RACI's Board, and this Commission, said Board members are found to be unqualified or unsuitable. Commissioner Peyton indicated this is a moot concern at this time due to conversations he has had since the last Commission meeting. He stated that his interpretation of the contested case and subsequent Order is that no current member of the Board of Directors would be removed prematurely from the Board without just cause. Tom Flynn, legal counsel for RACI, concurred with Commissioner Peyton's comments. He advised the Commission of an additional amendment to the Bylaws in Article XII dealing with votes on conflicting issues or transactions, or those involving family members. This issue has been handled by a memorandum that each Director had to sign off on yearly, but has never been included in the Bylaws.

Commissioner White moved to withdraw his motion made during the October 24, 1997 Commission meeting, and substitute the motion that RACI's Proposed Bylaws be approved by the Commission subject to RACI's Board approval of the proposed Article XII at their annual meeting on November 21, 1997. Commissioner Hansen seconded the motion. Hearing no further discussion regarding the Bylaws, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-156)

Commissioner Peyton noted that the Commission had granted a conditional license to RACI/PMR&C on October 24, 1997, with one of the conditions being the resolution of issues surrounding the Bylaws. He moved that the Bylaws, as presented and approved at this meeting, would be deemed to be a resolution of that particular condition, and that it is the Commission's understanding that the Bylaws will be adopted and enforced as presented. Commissioner Peyton reiterated that the Commission's interpretation of those Bylaws is that they do not allow the removal of any current Director other than for just cause as set forth in the Bylaws. Commissioner White seconded the motion.

Hearing no further discussion, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-157)

Mr. Flynn noted that one of the conditions of the granting of the license at the October 24th Commission meeting was that Proposal 1 for the Grants Advisory Committee was to be adopted by RACI. He advised that said proposal has conceptually been adopted by the Board, but will be formally adopted at the annual meeting to be held on November 21,

1997. Under this proposal, fifteen different organizations will be represented. There will be a total of 18 members on the board.

Mr. Flynn then moved to the status of the lease agreement between RACI and Polk County. He noted that the Commission had approved the Lease at the October meeting with the following conditions: Delete Item 3 regarding distribution of the net receipts, as well as a reference to those distributions in Paragraph 21; and clarify Paragraph 41 to indicate that if Polk County's closing agreement procedure with the IRS is not completed by December 31, 1997, then the Operating Agreement would be amended to conform to the Lease. Under this scenario, RACI would begin making lease payments to Polk County, and Polk County's control over certain aspects of the operation would be removed. Mr. Flynn stated that he had made changes to the Lease accordingly, but noted that the County had some concerns they wished to address. He feels the County would like the lease to be approved with the Commission's qualifications, and with the reservation that if the closing agreement has not been completed, the Commission reserves the right to take any action deemed necessary if the parties are not operating under the Lease. Liza Ovrom, Polk County Attorney, voiced Polk County's concerns to the Commission. A discussion of various aspects followed. No action was taken.

Bob Farinella and Tom Timmons, General Manager and Vice President of Operations at PMR&C respectively, gave a brief introduction regarding the proposed expansion of the facility. Steve Laughlin and Terry Holmes, representing the architectural firm of Leo A. Daly, provided an in-depth presentation. The proposed expansion included a horse pavilion, turf track/practice track, traffic, new dormitory, new offices, buffet, theater, show lounge and expanded casino and sports book (simulcasting). If approved, the expansion would increase the existing facility by 83% at a cost of $38 million. There would also be extensive remodeling to the existing facility. If RACI were to start from the ground up, it would cost approximately $100 million. The facility would contain approximately 315,000 square feet if the proposed expansion were approved.

There was a discussion as to how independent the various parts of the project were. The questions specifically centered on those portions pertaining to the track improvements versus the casino improvements. If just the track improvements are made, the project will cost approximately $8.8 million.

Following a short break, Mr. Farinella and Mr. Timmons made additional comments in support of the expansion project. Commissioner Peyton complimented them on the project, but he stated that he is opposed to the addition of 400 slot machines. Commissioner Peyton indicated that he is willing to support some of the improvements, that some should be mandatory; specifically, facilities for jockeys, safety concerns, and improving the facility from a racing standpoint. He is opposed to expanding the casino operations at this facility, as well as any other facility. Commissioner Peyton also brought up the problems between RACI and Polk County. He also wondered why someone would make $38 million plus of improvements on someone else's property. Commissioner Peyton stated that until RACI and Polk County reach an agreement making RACI the deed holder/title holder to the property, he is not interested in the

proposal, with some exceptions. He feels improvements should be made to the horse barns, jockey quarters, turf track and horse pavilion. Chair Sealock concurred with some of Commissioner Peyton's comments. She also expressed concerns about the magnitude of the project, and the fact that the Commissioners had just received the plan and presentation setting forth the particulars. She stated that she did not feel this was adequate notice for the Commission to approve this request.

Commissioner Hansen wondered how RACI was to extricate itself from all of the restrictions imposed by the Commission, but shared the feeling that RACI could be making a bad investment by putting improvements into a facility which they may have to pay for a second time.

Chair Sealock called for a motion. Commissioner White moved to approve the architectural agreements relating to the horse pavilion, turf track/practice track, traffic, and the new dormitory, and specifically omitting the new office, buffet, theater, show lounge, casino and sports book. Commissioner White also moved to approve the contracts with Aristocrat and I.G.T for a total of 50 new slot machines. Commissioner Peyton seconded the motion. The motion carried on a 4-1 vote, Commissioner Hansen voting no. (See Order No. 97-158)

Chair Sealock moved to RACI's contract with Spector Entertainment to provide uplink services for simulcasting during 1998. Commissioner Peyton moved to approve the contract. Commissioner White seconded the motion, which carried unanimously. (See Order No. 97-159)

Chair Sealock then moved to the contract approval portion of the agenda. She called on Mark Lohman, General Manager of The President, who presented the following contracts for Commission approval:

- Atronic Casino Technology Ltd., LLC – Purchase of 10 Slot Machines
- Collection Service Center – Collection Service for Garnishments and Child Support Recovery, Employee Payroll Deduction Only
- Country Club Coffee – Local Coffee Distribution
- GDC, Inc. – Gaming Tokens/Chips
- Great Western Supply Co. – General Cleaning Supplies Supplier
- IKON Office Solutions – 36 Month Lease on Copier for 4th Deck of Boat, Second 36 Month Maintenance Agreement
- Iowa Workforce Development – State Unemployment Taxes
- MacFarlane, Ferguson & McMullen – Labor Attorneys
- Quad City Sports Center Assn. – Annual Contribution for Purchase of New Ice Resurfacer for 3 years
- Riverside International Truck – Replace Two 24 Passenger Shuttle Buses
- Sauk Trails Inc. – Subsidy Bus Service
- Sigma Games Inc. – Purchase of 11 Slot Machines

Commissioner Hansen moved to approve the contracts as submitted by The President. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-160)
Chair Sealock called on Mr. Terp, Vice President of Business Development for Ameristar Casinos, who presented the following contracts for Commission approval:

- Andersen Construction Co. – Enclose North Parking Lot Ramp Entrance
- Sign Spec, Inc. – Fabrication of New Slot Signage for Casino Floor

Following a brief discussion concerning the contract with Andersen Construction Co., Commissioner Hansen moved to approve the contracts as submitted by Ameristar. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-161)

Mr. Terp introduced Ray Nielsen as the new General Manager for Ameristar II in Council Bluffs, and provided a brief history of his experience in the gaming industry.

Chair Sealock moved to the contracts submitted by Miss Marquette. Roger Knott, Director of Compliance, submitted the following contracts for Commission approval:

- Paulson Gaming Supplies – Gaming Supplies (Dice, Playing Cards, Blackjack and Caribbean Stud Layouts)
- Paw Marketing – Promotional & Gift Shop Resale Items

Commissioner Peyton moved to approve the contracts as submitted by Miss Marquette. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 97-162)

Chair Sealock called on Lady Luck Bettendorf to present their contracts. Curt Beason, legal counsel, presented the following contracts for Commission approval:

- Amendment to Charter Agreement
- Transfer Agreement (TIF Agreement)
- Waterway Fine Arts – Mounting and Framing Sports Memorabilia and Other Items for Display on Property

Commissioner Hansen moved to approve the contracts as submitted by Lady Luck Bettendorf. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-163)

Chair Sealock called on Dubuque Diamond Jo to present their contracts for Commission approval. Doug Gross, legal counsel, presented the following contracts:

- Bawden & Associates – Advertising Campaign
- Cambridge Iowa Gaming Company – Letter of Intent

- Naylor, Hoover & Blair, P.C. – Legal Work regarding Labor and Employee Issues

Mr. Gross advised the Commission that Greater Dubuque Riverboat Entertainment Company (GDREC) had entered into a Letter of Intent with Cambridge Iowa Gaming Company. Cambridge will pay GDREC $60,000 to have the exclusive right to work with them through the end of January, 1998 to do necessary due diligence to determine whether or not they wish to purchase the DDJ and other assets for $60 million. Mr. Gross advised that if the purchase goes through, Cambridge is planning to make substantial portside improvements. Mr. Gross stressed that DDJ is not asking the Commission to approve the sale of the DDJ at this time. They are only seeking approval of the Letter of Intent with Cambridge Iowa Gaming Company.

Commissioner Hansen moved to approve the contracts submitted by DDJ. Commissioner White seconded the motion, which carried unanimously. (See Order No. 97-164)

Chair Sealock then called on Dan Kehl, General Manager of Catfish Bend Casinos (CBC), who presented the following contracts for Commission approval:

- City of Burlington – Lease of Burlington Riverfront
- Articles of Amendment to Kehl Development Corporation
- Kehl Development Corporation Stock Redemption and Cross Purchase Agreement
- Stock Purchase Agreements

Commissioner Peyton moved to approve the contracts as submitted by CBC. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 97-165)

Mr. Kehl advised the Commission that CBC had moved to the Burlington dock site on November 17th.

Chair Sealock moved to the contracts for Bluffs Run Casino. Doug Okuniewicz, Director of Gaming, submitted the following contracts for Commission approval:

- Atronic Casino Technology – Purchase 20 Slot Machines & Spare Parts
- Avey Masonry & Concrete – Kennel Wall Construction

Mr. Okuniewicz introduced Piers Banks who is returning to Bluffs Run Casino after working for Gulf Greyhound Park. He will be the Assistant Operations Manager.

Hearing no comments, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contracts as submitted. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 97-166)

Chair Sealock then called on Bruce Wentworth, General Manager of Dubuque Greyhound Park & Casino, who presented a contract with Weber Paper Company for paper products for Commission approval.

Hearing no comments, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contract as submitted. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 97- 167)

Chair Sealock then called on BRC regarding their request for approval of the 1998 Racing Season. Mr. Okuniewicz and Eric Wilson, Director of Compliance were available to answer any questions. Iowa West Racing Association (IWRA)/BRC requested racing dates of January 1 through December 31, 1998 for a total of 365 performances. There will be seven performances per week with evening performances beginning at 7:15 P.M. on Friday and Saturday, and afternoon performances will begin at 4:00 P.M. on Sunday, Tuesday, Wednesday and Thursday, and at 1:30 P.M. on Saturday. They requested additional performances for Memorial Day, Labor Day, and New Year's Eve. No races will be held on January 1, December 24, and December 25. Their simulcast request was approved with the renewal of the racing license.

Mr. Ketterer asked for an update regarding kennel compound improvements. He was advised that half of the kennel walls should be repaired by the end of the following week.

Mr. Wilson advised the Commission that Yates-Firestone Kennel would be replacing the Mullen Kennel for the 1998 racing season.

Hearing no further comments, Commissioner Peyton moved to approve IWRA/BRC's request for approval of the 1998 racing season. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 97-168)

Chair Sealock moved to the request for approval of plans for the distribution of the escrow fund at BRC submitted by the Iowa Greyhound Association (IGA) and IWRA. Linda Vanderloo, Director of Racing/Administration, advised the Commission that she had been working with Jerry Crawford, legal counsel for IGA, and Mr. Wilson. Mr. Crawford and Mr. Wilson presented a unanimous agreement to the Commission for their approval. Mr. Crawford presented the following highlights of the agreement:

- 5 Member Committee to serve in 1998 – 2 members to be appointed by IGA, one each by DGP&C and BRC, and one by the IRGC upon the recommendation of Jack Ketterer and Linda Vanderloo.
- The committee will undertake the following tasks:
  - Interest from the escrow account will continue to fund one-half of the net simulcast expense during 1998
  - Dissemination of information regarding breeding, ownership, etc. to those interested in becoming involved in the industry

- Development of standards for a certification program whereby Iowa trainers, breeders and kennel operators may participate in programs to enhance the quality of the greyhound industry in Iowa
- Committee will be a clearing house for access to and dissemination of information concerning all aspects of the industry
- Shall initiate a Festival of the Racing Greyhound for 1998 which may coincide with the 1998 Breeders Classic Race at BRC, and may include other feature races agreed to by the parties
- Committee will not be a candidate for the Greyhound Racing Promotion Fund in 1998

Mr. Crawford also advised the Commission that the parties had reached an agreement regarding point values for 1998, implementation of the check-off fund in completion of drafting work on fair dismissal clauses and 50% Iowa-kennel clauses that will be jointly recommended to the Commission at a future date.

Hearing no further comments, Chair Sealock called for a motion. Commissioner Hansen moved to approve the agreement. Commissioner White seconded the motion. He requested that the agreement be put in writing, and requested a signed copy be provided to the Des Moines office. The motion carried unanimously. (See Order No. 97-169)

Chair Sealock moved to the approval of the distribution of the Greyhound Promotion Fund as authorized by Iowa Code 99D.12(2)c. Ms. Vanderloo advised the Commission that a vote on this item was deferred at the August meeting, but did not vote on this item at the September meeting. A vote is needed to allow the distribution of the funds to IGA.

Hearing no further comments, Chair Sealock called for a motion. Commissioner Peyton moved to approve the distribution of the Greyhound Promotion Funds to IGA. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 97-170)

At this time, Chair Sealock asked if anyone present would object if the economic impact study reports were given prior to the public comments and decision regarding a license for Osceola. She indicated this would not be a lengthy agenda item. Hearing no objections, she proceeded to call on John Pavone, President of the Iowa Riverboat Association. He presented a study performed by Coopers & Lybrand titled Gaming Industry Employee Impact Survey. The study was prepared for the American Gaming Association for the respective states. He noted this is the first economic study done regarding specific employment on this scale. He provided some of the highlights of the numbers showing what employment within the gaming industry has done for many individuals. A copy of the report is available in the Commission's office.

Chair Sealock, noting that the Commission had just received copies of the study, asked Mr. Pavone if he would be available to answer further questions at the January

Commission meeting after Commission members have had an opportunity to review the material. Mr. Pavone indicated that he would be glad to do so.

Mr. Farinella, President of the Gaming Association of Iowa, presented a study titled Examination of the Micro Economic Impacts of Casino Gaming in Iowa prepared by Arthur Andersen. The study provides an economic overview of the gaming industry in Iowa. Mr. Farinella advised the Commission that the Gaming Association of Iowa would be using this document in their meetings with legislators to provide overall information regarding the gaming industry. A copy of this document is available in the Commission office.

Mr. Farinella distributed a copy of the year-to-date economic impact information regarding the amount of money spent for wages, supplies, taxes, and charitables for all twelve licensees.

Following a short lunch break, Chair Sealock moved to the Public Comments regarding the Clarke County Development Corporation (CCDC)/Southern Iowa Gaming (SIG) application for a riverboat on West Lake in Osceola. The following individuals spoke in favor of the proposed riverboat: Sandy Kale, Representative Richard Arnold, Brett Haines, Ken Baker, Jerry Smith, Kevin Klemesrud, Jack Ames, Stan Stickler, Gerald Clark, Senator Patty Judge, Mayor Fred Diehl, Leo Bonser, and Jim Schipper. Their comments centered on the number of better paying jobs that will be created, the proposed convention center to draw meetings to the area, and the positive economic impact they feel the riverboat will have on development in southern Iowa.

The following individuals spoke against granting the license in Osceola: Helen DeVos, Mary Klein, Alethea Kenny, Chuck DeVos for Concerned Citizens Against Gambling, Beth Brown, Wayne Brewer, Dale Bonnet, and Kevin Dorland. Their comments centered on their concerns over the safety of the drinking water, habitat, and the social impact the riverboat would have on the families and existing businesses in southern Iowa.

Commissioner White asked Mr. Grace if he would have a consultant available during the construction period to reduce the impact on the habitat. Mr. Grace stated that SIG would be required by DNR to build the necessary lagoons to keep construction site leakage out of the lake. He noted that the buildings will be built on land that is currently used to grow crops, and that there would be a very limited effect on the wildlife in the area.

Commissioner White stated that someone had mentioned the condemnation of some property. Mr. Grace stated that he had met with Mr. Bonnet on a number of occasions. He would like to be able to obtain all of the property by option rather than condemnation. Mr. Grace noted that SIG has all of the property necessary to build the facilities. Mr. Bonnet's property is needed for the interstate interchange. Commissioner White clarified his understanding that any property condemnation would be for the interstate interchange, and not the proposed land-based facilities. Mr. Grace indicated that was correct.

Commissioner White asked what steps were being taken in designing the boat to limit any environmental destruction. Mr. Grace advised that the holding tanks would be double-lined, as well as the diesel fuel tanks. It is estimated the riverboat will only need to carry a maximum of 2,500 gallons on board in order to complete a cruise.

Commissioner Peyton asked Mr. Grace how the parties arrived at the figure of $5 million to insure against spills, etc. Mr. Grace indicated it was a mutually agreeable figure, with no reasoning behind it. Commissioner Peyton asked what would happen if the liability was larger than that. Mr. Grace indicated the company could be sued. He stated that he felt there would be better control over the water quality with their facilities, as they will be adding sewage treatment facilities.

Commissioner White asked what steps the City of Osceola has taken to control the agricultural runoff in the area. Dr. Wood stated that the City had tried several different options, however, the chemicals have settled to the bottom of the lake. The City is currently using an activated charcoal blanket through a contract with Calgon. This blanket, which is changed frequently, removes the chemicals from the water. Noting that the City does not have an alternate water supply, Commissioner White asked if they have water stored anywhere. He was advised the City has three water towers capable of holding approximately 2.5 million gallons of water, which would last for about 2 ½ days. Dr. Wood stated that a catastrophic spill from the riverboat would take 1% of the water in the lake to dilute it to a safe level. He feels the Burlington Northern/Santa Fe train and interstate pose a greater threat to the water supply.

Commissioner Allen asked about the financial arrangements, and if an acceptable plan would be submitted by the January 15, 1998 Commission meeting. Mr. Grace advised her SIG intended to have the financial arrangements completed and submitted at that time. Commissioner Allen asked if the final plans for the site and vessel would be available at that time as well. Mr. Grace stated that if the proper approvals were given at this meeting, he would start work on the engineering aspects immediately.

Commissioner Peyton stated the he had some questions concerning the lease with the City. He expressed his belief that gambling will eventually leave the state. He is concerned that when that occurs, he would like to see any services of the operator removed in such a manner that is acceptable to the community. He noted the lease contains specific provisions allowing the City to terminate the lease in the event the license is not renewed, or excursion riverboat gambling is canceled by a referendum; however, it does not contain a provision releasing the lake back to the City if Iowa repealed gambling entirely. Mr. Grace stated he felt the lease would automatically be canceled. Commissioner Peyton stated that it would not as there is a provision stating that if gaming operations are ceased for 90 days, then it would revert to the City, but only for reasons within the SIG's control. This provision would not apply if the Legislature decided to repeal gambling. Commissioner Peyton asked Mr. Grace if he would be agreeable to amending the lease to indicate that if SIG ceases operations, the lake goes back to the City. Mr. Grace indicated he was.

Commissioner Peyton noted that Mayor Diehl had stated that the prohibition on leasing other areas of the lake was to prevent other operators from attempting to put another gaming facility on the lake. Mayor Diehl stated that it is not the City's intent to exclude the duck hunters, fishermen, etc. The City is also planning to expand the conservation trails around the lake. Commissioner Peyton asked if the City had any objections to clarifying this language. Mr. Grace indicated they did not to object to that extent, but stated that the language was to offer some control over some other activities on the lake for safety reasons. Commissioner Peyton stated that he understood the reasons, but was not willing to unnecessarily restrict public access to the lake as long as it did not interfere with SIG's operations.

Commissioner Peyton asked for clarification regarding the revenues to be paid to the non-profit. Mr. Schipper stated that CCDC would receive 1½% of the monthly gross gaming revenue, which is projected to be $600,000 for the first year. Commissioner Peyton asked how this compared with the Argosy proposal, which called for a "head" tax. Mr. Schipper stated that Argosy's proposal was based on a head tax and net operating income to the entity. Based on Argosy's projections, CCDC would have received about $400,000 based on $60 million revenues. Under SIG's application, CCDC is projected to receive approximately $600,000 on $40 million of revenues.

Commissioner Peyton stated that he had a concern regarding the term "Lakeside Casino & Hotel". He indicated that he could see both sides of the issue, but feels it is important the public is clear on the fact that this facility is not a land-based casino. Mr. Grace stated that it is important for the success of the venture that it be properly advertised. It is SIG's intent to advertise the riverboat and the adjoining facilities as one unit. He stated that it was his opinion that it should be called Lakeside Casino. Commissioner Peyton stated that he raised the issue because he feels it has some merit, but questioned whether this was the proper forum for that type of decision. He has been made aware of a similar problem regarding the name of a facility in Council Bluffs.

Mr. Schipper noted there are two concepts of lakeside – one is near the side of a lake and other is beside a lake. This project will be near the side of the lake.

Chair Sealock noted that she still had some safety concerns regarding the vessel. Mr. Grace stated that the facility would be in complete compliance with all the latest Code fire safety requirements as approved by everyone that reviews them. Additionally, the boat will contain a sprinkler system. When the boat is attached to the dockside facility, it will be identical to a land-based facility. When the boat is cruising, a pump is added to the sprinkler system. The boat will only need six feet of draft.

Hearing no further comments, Chair Sealock called on Commissioner Hansen to make his comments concerning the application. Commissioner Hansen stated that his position has not changed much from last spring, except that this is a much better proposal. He complimented the individuals who spoke against the application for the sincerity and commitment, but stated that he felt they should be speaking to their legislator. Commissioner Hansen noted the Commission has 21 criteria on which to judge an

application. He feels their problem is not so much gambling as it is addiction. Commissioner Hansen gave the following statistics relating to gambling in Iowa: 1% are compulsive gamblers, 2% are problem gamblers. The Iowa addiction rate is only 60% of the national rate. He noted that the Legislature has addressed this problem, and as a result, Iowa has the highest rate and dollar level of expenditure in the addiction program, as well as one of the lowest rates of addiction. Commissioner Hansen stated this is an excellent proposal, which he intends to support.
Commissioner Peyton noted that he had received numerous letters both for and against the riverboat. He noted that if he lived in Clarke County, he would have voted no in the recent referendum. He feels the riverboat provides false promise of economic prosperity, and in many cases, is economic redistribution, not economic development. Commissioner Peyton noted that Osceola could be an exception as they have the opportunity to pull people in from outside the county. He noted that it may not be redistribution of money in the Osceola community, it is redistributed from another community, which troubles him. In light of the above, Commissioner Peyton noted that he has a responsibility to the citizens of Iowa to uphold the statutes of Iowa, and he can not substitute his judgment for the people of Clarke County. He stated the application meets the statutory requirements, and will support it. He noted that if he were in a different situation, he might not.

Chair Sealock stated that many people don't understand that the Commission is a regulator who enforces the law, but don't make the laws. She noted that the law has provided the Commission with a limited amount of responsibility. Chair Sealock indicated that the citizens of Osceola are the only community who have drawn the Commission into their personal lives regarding the effect the riverboat would have. She commended the citizens of Osceola for their tenacity and work ethic. She noted that SIG's application addressed many of her concerns from the previous applications for a riverboat on West Lake in Osceola.

Commissioner White noted that it appears both sides of the issue regarding a riverboat on West Lake were aired during the time leading up to the recent referendum. The positive and negative impact of gambling on the community will be magnified because of the size of Osceola and the county. Commissioner White stated he hoped there was not such a rush to get an application filed, that the community did not obtain an equitable agreement with Mr. Grace. Commissioner White expressed his hope that Mr. Grace would consult with an environmentalist during the development of the site.

Commissioner Allen stated that she had received many letters, both pro and con, over the last month, which only added to the complexity of trying to reach a just and equitable decision. She noted that it is hard to dispute the economic benefit derived from the gaming operations in Iowa. In 1996, over $9.5 billion was wagered in Iowa. Commissioner Allen went on to state that she is keenly aware of those individuals and businesses that can be adversely affected through addiction or means. But in the final analysis, the decision factor will rest with the people, which was shown by the results of the recent referendum. She believes the referendum vote sent a strong message to the Commission that the voters of Clarke County deserve the same economic opportunity

afforded other areas with gaming within the state. Commissioner Allen stated that she admired the tenacity and perseverance of Clarke County in pursuit of their boat. She stated that she believes CCDC and SIG have taken great pains to comply with state laws and regulations, and have gone the extra mile to meet the criteria set forth in the Iowa Code. Commissioner Allen noted that the riverboat would not be the answer to all of the area's economic problems. She is well aware that a positive vote by the Commission will establish a precedent for allowing gambling riverboats on bodies of water other than rivers, but that it was the Legislators who provided this option, not the Commission. Commissioner Allen stated that she saw no compelling reason to deny this license, and would vote in the affirmative for this application.

Mr. Ketterer stated that the Commissioners who voted against the previous Osceola applications had valid concerns. He noted that he agreed with Commissioner Hansen's comment that those individuals who were against the issuance of a license should talk with their Legislator. Mr. Ketterer stated that he hoped the community would focus on healing the divisions caused by this issue.

Hearing no further comments or questions, Chair Sealock called for a motion. Commissioner Allen moved to approve the application of CCDC and SIG with the following conditions:

- Submission by the January 15, 1998 Commission meeting of an acceptable financing plan with terms equal to or more advantageous than those upon which the five-year projection was based.
- Full completion of vessel and all site-based improvements, including public improvements, not to include the interchange, prior to the start-up of the operation.
- The initial license period would end on March 31, 1999.
- Submission and approval of final plans for site and vessel by the January 15, 1998 Commission meeting.
- The vessel being constructed according to Title 45 Code of the Federal Regulation Standards and certified by the American Bureau of Shipping or other recognized body.
- An acceptable dockside manning station be built after staff consultation with the Department of Natural Resources.

Commissioner Hansen seconded the motion.

Chair Sealock called for any discussion regarding the six conditions set forth by Commissioner Allen. Mr. Grace indicated that he did not have any problems with the majority of the conditions, but stated that he would not be able to submit final vessel and site plans by January 15, 1998. He stated that he knows the final vessel and site plans have to be approved by the Commission prior to beginning any construction. Mr. Ketterer advised Mr. Grace that the Commission's next meeting after January would be March 5, 1997, noting that he did not want Mr. Grace to be in a position of having to wait

for a period of time before beginning construction. He asked that this condition be modified to allow SIG to submit the plans at their earliest convenience.

Commissioner Peyton suggested making the final vessel and site plans subject to staff approval, noting that he was comfortable leaving that decision up to staff. Commissioner Hansen, noting that Mr. Grace is aware that he can not begin construction prior to receiving approval, suggested that condition be amended to show that the plans be submitted as soon as possible, and subject to staff approval.

Mr. Grace addressed the licensing period set forth in the conditions. With the dates specified, he would be required to ask a lender to approve a $35 million loan, but the license would expire before the facility opened for business. He requested that the license expiration date be extended for one year so the facility could be open for a few months. He indicated there was a possibility the facility would not even be ready to open at that time.

Mr. Ketterer noted that Mr. Grace has agreed to complete the land-based development and the vessel prior to the start of operations. He noted that the Commission's licenses run from April 1 to March 31.

Mr. Grace indicated they were requesting that the license run at least one year past the expected opening date of April 1999, or the year 2000.

Commissioner Hansen noted that he had requested the amendment on the submission of site and vessel plans. He asked Commissioner Allen if she was amenable to an amendment that would state that the license would run one year from date of completion. Commissioner Allen indicated that she was agreeable to the amendments to her motion made by Commissioner Hansen. Mr. Ketterer advised Commissioner Hansen that the license would need to expire on March 31, 2000.

Hearing no further discussion or comments regarding the motion, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-171)

Chair Sealock moved to Administrative Business – Appointment of the Administrator for May 1, 1998 through April 30, 2002. Commissioner Peyton moved, pursuant to Iowa Code Section 99D.6, to appoint Jack P. Ketterer as Administrator of the Iowa Racing and Gaming Commission for a term commencing on May 1, 1998 through April 30, 2002, and that the salary be reflected in the Commission's Order. The blanket fidelity bond coverage for officials of the State of Iowa is sufficient. Commissioner Hansen seconded the motion.

Chair Sealock stated that she felt the State of Iowa was fortunate to have someone of Mr. Ketterer's caliber in this position. Commissioner Peyton stated that in reviewing a survey of responsibilities and qualifications of other individuals in Mr. Ketterer's position in other states, he agreed that Iowa is fortunate to have someone with his qualifications.

Hearing no further discussion, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 97-172)

Mr. Ketterer stated that he appreciated the vote of confidence, and will do his best to fulfill it.

Chair Sealock moved on to the Public Comment segment of the agenda. She called on Otto Steele, who addressed the Commission on behalf of Citizens for Gambling-Free Government and others, asked the Commission to support a state-wide legislative study of the social costs in Iowa. Chair Sealock advised Mr. Steele that the Commission has always supported a legislative study of the costs of gambling in Iowa. Mr. Steele noted that the National Commission would also be conducting a study.

Chair Sealock then called on Dick Sturgeon, President of Workers Have Rights Too, a non-profit organization, in Sioux City, Iowa. He distributed packets of material to the Commissioners for them to review later. He stated that his organization is aware of the positives, as well as the negatives, of having the Belle of Sioux City in Sioux City. Mr. Sturgeon advised the Commission that over the past two years a number of Belle employees, who were involuntarily separated from employment, have come to his office, and the problem appears to be growing. From information requested from the Commission, he has learned that over 600 licenses have been issued over the past 12 months. Mr. Sturgeon indicated that he had received information showing that 147 people had been terminated for cause between January 1 and November 1, 1997. Mr. Sturgeon indicated his presentation contained some suggestions on administrative rules.

Mr. Pavone, General Manager of Belle of Sioux City, advised the Commission that Mr. Sturgeon's group had filed a complaint with the National Labor Relations Board (NLRB) three days ago. He also provided information that contradicted Mr. Sturgeon's statements. Mr. Pavone stated that BSC has terminated 34 employees since the beginning of the year for cause. He stated that if an employee is terminated for cause, there is a four-step process to which they are entitled. Mr. Pavone advised the Commission that BSC has a policy that anyone that leaves employment without a 2-week notice is asked to not come on the property for 90-days.

Leo Bonser, representing the Seafarers Entertainment and Allied Trade Union, advised the Commission that a contract had been completed within the last year to represent the employees of the Belle of Sioux City. He noted that all complaints are heard on a monthly basis, and all have been settled prior to reaching arbitration. If any disciplinary action is taken, a union representative is present during the process to insure that it is just and for just cause.

Mark Joyce, Lobbyist for the Riverboat Association, as well as doing grass root projects, stated that his current project involves getting the BSC employees more involved in the legislative process. He noted that in a recent meeting he met with over 240 employees and had them complete a questionnaire. He stated there were no negative comments on any of the questionnaires returned to him.

Chair Sealock directed Mr. Ketterer to look into the matter and give a report to the Commission.

Commissioner White asked Mr. Pavone how many employees the union represents. Mr. Pavone indicated 52% of the BSC employees are represented, 8 out of 12 departments. The following groups are not covered: dealers, security, clerical, surveillance, secretarial, etc. Commissioner White stated that he was not sure this is an issue in which the Commission can get involved.

As there was no further business to come before the Commission, Chair Sealock called for a motion to adjourn. Commissioner Peyton so moved. Commissioner Hansen seconded the motion, which carried unanimously.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS