IOWA RACING AND GAMING COMMISSION
MINUTES
JANUARY 15, 1998

The Iowa Racing and Gaming Commission (IRGC) met in the Granary Room at the Comfort Suites at Living History Farms, 11167 Hickman Road, Urbandale, Iowa on January 15, 1998. 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 requested a motion to approve the agenda. Commissioner Allen so moved. Commissioner Hansen seconded the motion, which carried unanimously.

Chair Sealock then requested a motion to approve the minutes from the November 20, 1997 Commission meeting. Commissioner Hansen noted a correction on Page 12, the sentence starting with "These gamblers account for..." should read "The Iowa addiction rate is only 60% of the national rate." Commissioner Hansen moved to approve the November 20, 1997 Commission minutes with the noted correction. Commissioner Peyton seconded the motion, which carried unanimously.

Chair Sealock called on Jack Ketterer, Administrator of IRGC, to address the rules before the Commission. Mr. Ketterer advised that the rule under Notice of Intended Action was a rule proposed by Commissioner Hansen. Mr. Ketterer requested that Commissioner Hansen provide some background information as to why he felt the proposed rule was necessary. Commissioner Hansen stated that the proposed rule was based on Mr. Ketterer's memo requesting licensees to submit each and every machine increase at their particular facilities. In reviewing Iowa Administrative Rule 491-4(28), he felt the Commission may not have the authority to do so, and wanted to insure that every additional machine purchase, no matter how minimal would come before the Commission. Secondly, Commissioner Hansen stated that he had a concern that the Commission has received a number of requests during 1997 requesting authorization to increase the number of machines at various facilities. He would like the Commission to be more consistent in how the licensees are treated. To that end, he feels the Commission should examine some objective data provided by the licensee as part of the decision-making process. Such data could include, but would not be limited to, the following: win per machine average for the month compared with other licensees; Christensen/Cummings surveys showing the market opportunity in a given licensee's area; and any other objective measures. Following Commissioner Hansen's explanation, the other Commissioners asked several questions about the proposed rule.

Commissioner Allen asked if the uniform standards would restrict the Commission in their decision-making. Commissioner Hansen indicated the Commission would not be held to just those standards set forth. In his opinion, the Commission would retain a considerable amount of latitude in determining whether to grant a licensee's request for additional machines, and does not guarantee an advantage for one licensee over another.

Commissioner White characterized the proposed rule as a "Prairie Meadows" rule. Using the criteria of win per machine average would permit PMR&C to double or triple the number of slot machines at their facility as the machines have the highest win per machine in the state. He stated that he sees the proposed rule as a way for PMR&C to come in the "back door" to obtain additional slot machines. Commissioner White stated that he did not feel the rule was needed. He stated that slot machines at a racetrack enclosure are an exception to the established gambling rules. He noted that slot machines were allowed at the racetracks to help those facilities retire debt and supplement purses. Under the current rules, the Commission has the discretion to do what it feels is best, and feels the rule could diminish that discretion.

Chair Sealock stated that she did not interpret the proposed rule as a "Prairie Meadows" rule. She feels there have been some inconsistencies in how the Commission has been treating the licensees. She noted that she is not aware of any instances in which the Commission has denied a request to add slot machines at any facility.

Hearing no further discussion concerning the proposed rule, Chair Sealock called for a motion. Commissioner Hansen moved to adopt the proposed rule. Commissioner Hansen stated that he did not feel Commissioner White's characterization of the proposed rule as a "Prairie Meadows" rule was any more justified than if he were to say that his opposition is fostered by the anti-gambling forces. He noted that the Commission has reviewed requests from Catfish Bend, Harveys, Bluffs Run Casino, Ameristar, and others. Commissioner Hansen stated that without the proposed rule, there was no requirement for the licensees to submit an increase in the number of machines unless the contract amount would exceed $50,000. He feels there is sufficient latitude within the parameters of the proposed rule to allow the Commission the necessary discretion. The motion died due to the absence of a second. (See Order No. 98-1)

Mr. Ketterer moved to the rule under Final Adoption – subrule 13.6(6). He explained that this is the rule the Commission felt was to vague during an appeal hearing held in August in Davenport. The Notice of Intended Action to rescind this rule was approved by the Commission at the September Commission meeting.

Hearing no discussion, Chair Sealock called for a motion. Commissioner Allen moved to approve the final adoption regarding rule 491-13.6(6). Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 98-2)

Chair Sealock moved to Dubuque Racing Association's (DRA's) request for clarification of Administrative Rule 491-20.11(6) regarding the distribution of receipts by non-profits. Bruce Wentworth, General Manager of Dubuque Racing Association & Dubuque Greyhound Park & Casino (DRA/DGP&C), advised the Commission that DGP&C has started its grant process for the funds available. There is a question as to whether or not they can give funds to out-of-state charitable organizations. Following a brief discussion of the issue in which Commissioner White stated his intent to request an Attorney General's opinion, Chair Sealock advised Mr. Wentworth that he would have to wait until the Commission has received the Attorney General's response. Chair Sealock asked

Jeff Farrell, Assistant Attorney General to the Commission, when the Commission might expect a response to Commissioner White's request. Mr. Farrell indicated that he and the Attorney General had discussed the matter, and he was informed a response would be available in approximately ten days following receipt of the request. Commissioner Peyton asked about the funds that have already been distributed to out-of-state charitable organizations if it is determined that the funds were to be distributed to Iowa-only charitable organizations. Mr. Farrell indicated that would need to be part of the request.

Chair Sealock called on Bob Farinella, General Manager, and Tom Timmons, Vice President of Operations, of the Racing Association of Central Iowa/Prairie Meadows Racetrack & Casino (RACI/PMR&C) to present their agenda items. Mr. Timmons requested approval to take bids to place gutters on all barns that currently do not have gutters, and to proceed with the project once a satisfactory bid has been obtained. Commissioner Peyton moved to approve the request. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-3)

Chair Sealock moved on to RACI/PMR&C's 1998 Season Approvals with Agreements and contracts. Derron Heldt, Director of Racing, advised the Commission that the positions of Steward and Assistant Racing Secretary/Clocker were still open, but should be filled within the next week to ten days. The simulcast program is basically unchanged from last year. The thoroughbred meet will run from Friday, April 24 through Saturday, July 4, 1998. Mr. Heldt noted that the mixed meet would run from July 17 through September 29, 1998. Post times for the thoroughbred meet will be at 6:30 P.M. on Monday, Thursday and Friday; 3:00 P.M. on Tuesday, and 5:00 P.M. on Saturday. The 45-day plan for the mixed meet will be presented at the March Commission meeting. A performance bond of $1 million is in place.

Mr. Ketterer indicated that he felt the approval of the 45-day plan should be conditioned upon the submission of the racing officials who are not currently in place. He expressed concern over the requirement for two races per day restricted to Iowa-breds. He noted that the agreement with the Iowa Thoroughbred Owners & Breeders Association calls for an additional payment of 45% to Iowa-breds in either restricted or open races. Mr. Ketterer asked what PMR&C's goal was for the Iowa-bred program, and how they determined whether or not progress was being made in achieving that goal, especially if the Iowa-breds are only racing against each other. He asked what PMR&C's goals were for the facility in the future. He noted they recently approved harness racing for 1999. He stated that he did not have a problem with that, but questioned where they were going as a track. He requested that a plan or progress toward a plan regarding PMR&C's goals as a racetrack, and how those plans fit into the national picture, be presented at the March Commission meeting. He indicated that a plan would also be beneficial to the horsemen, trainers and breeders.

Following a brief discussion, Chair Sealock called for a motion regarding PMR&C's 1998 Season Approval and agreements and contracts, Agenda Item 5B (1-10). Mr. Ketterer recommended approval pending formulation of a plan as to their goals, the

officials' names being submitted for commission approval, and a blanket simulcast approval be given, with staff approval for individual simulcast contracts as they occur.

Commissioner Peyton moved to approve the 1998 Season Approvals with the accompanying contracts and agreements with the conditions stated by Mr. Ketterer. Commissioner Allen seconded the motion.

Commissioner Hansen voiced his concern over PMR&C's recent decision to return to harness racing, and indicated that he would discourage such a move. Commissioner White indicated this could be part of their plan to determine what kind of track they want to be in the future.

Hearing no further discussion concerning the motion, Chair Sealock called for a vote. The motion carried unanimously. (See Order No. 98-4)

Chair Sealock moved to the next agenda item concerning PMR&C – the resubmission of contracts or architectural agreements with Leo Daly for a new office building, buffet, theater, show lounge, casino and sports book (simulcasting) area. Following a discussion as to whether or not it was appropriate for the Commission to rehear this request, Chair Sealock determined that the Commission would rehear the request.

Tom Flynn, legal counsel for RACI, advised the Commission that RACI's Board had spent a considerable amount of time studying various ideas in an attempt to balance very different interests, as well as to determine where PMR&C wants to be in the future. They came up with four different concepts: 1) Provide for the comfort and safety of PMR&C's employees, patrons, horsemen and other individuals on the premises; 2) Grow the Iowa horse industry in a safe and reasonable manner; 3) Distribute a substantial amount of money to Polk County; and 4) Distribute sufficient money to other charities.

Mr. Flynn thanked the Commission for approving the improvements related to the track side of the facility at the November meeting, but stated that RACI did not feel the request could be separated. He stated that the additional slots are necessary if RACI is going to meet the requirements of the Order and Stipulation entered into during the contested case hearing and to meet the goals set forth in their five-year plan. Mr. Flynn noted that Commissioners Peyton and White are making a distinction between riverboats and land-based casinos. He stated that after reviewing the law, he has trouble reaching the same conclusions. Iowa Code Section 99F.4(a) states that upon the application of a licensee of a track, the licensee will be able to operate gambling games at a pari-mutuel racetrack enclosure subject to the provisions of this chapter and rules adopted pursuant to this chapter. Mr. Flynn interprets that to mean the racetrack enclosure gaming facilities should be operating under the same rules as the riverboats. Mr. Flynn stated that Iowa Code Section 99F.6(4)(a) states "... However, if a licensee who is also licensed to conduct pari-mutuel wagering at a horse racetrack has unpaid debt from the pari-mutuel racetrack operations, the first receipts of the gambling games operated within the racetrack enclosure less reasonable operating expenses, taxes, and fees allowed under this chapter shall be first used to pay the annual indebtedness. The commission shall

authorize, subject to the debt payments for horse racetracks..., a licensee who is also licensed to conduct pari-mutuel dog or horse racing to use receipts from gambling games within the racetrack enclosure to supplement purses for races particularly for Iowa-bred horses pursuant to an agreement which shall be negotiated between the licensee and representatives of the dog or horse owners." He noted that after reading those Code sections, it is a stretch to state that it was the Iowa Legislature's intent that a land-based casino did not have the right to seek additional games to pay for improvements. Additionally, the improvements to the facility would benefit the horse industry in Iowa.

Tim Burgett, the mayor of Altoona, advised the Commission that this is an important issue for the city. PMR&C is the largest employer, and has the largest economic impact on the community. The City is very supportive of the proposed project.

Chair Sealock stated that the tour on Wednesday evening was enlightening. She noted that the workers were happy, pleasant and seemed to enjoy their jobs despite the working conditions. Chair Sealock indicated that she had spent considerable time on this issue in an effort to treat all licensees fairly and consistently. She noted that when slots were added at BRC, they added on to their building and refurbished the entire building. As soon as that project was completed, they had to make additional changes to the building. BRC had requested, and received, authorization on three different occasions for additional slot machines. Chair Sealock stated that she does not view adding slot machines as expansion of gambling. In her opinion, expansion of gambling is when the Commission permits gambling in a community that does not have gambling or adds another venue. She stated that she does not want to micromanage the various licensees. In response to Commissioner White's comment that the riverboats can only hold so many slot machines, she noted that five licensees have brought in larger riverboats and added more slot machines.

Commissioner Peyton stated that the current five-year plan would need to be modified in order to reach the goals set forth in the Order and Stipulation reached in the contested case hearing, even with the addition of 400 slot machines. In contrast to Chair Sealock, he considers the addition of 400 slot machines an expansion of gaming. Mr. Farinella stated that the figures contained in the five-year plan were very conservative. He noted that if the entire project were approved, PMR&C would benefit from operating efficiencies which will help them reach their goals.

Commissioner Peyton asked how the improvements, specifically omitted by Commissioner White in November, would affect racing at PMR&C. Mr. Farinella stated that the improvements would allow those patrons expressly interested in live and simulcast racing to be separated to allow those patrons to be able to more fully enjoy their particular style of racing. He noted the whole clubhouse facility was not upgraded when the casino was added due to limited funding.

Commissioner Peyton asked whether the above improvements would affect the purse levels. Mr. Farinella stated that the purses are a small part of the entire package. Without the complete package, it will be more difficult to attract the racing patrons.

Commissioner Peyton asked Mr. Farinella if he was familiar with the Christiansen/Cummings report issued in October 1995 regarding the saturation of gaming in Iowa. Mr. Farinella stated that he had read the report when it was issued. Commissioner Peyton stated that the study showed that at that time there was an unmet need of approximately $20-25 million dollars. He asked Mr. Farinella how he could justify an additional 350 slot machines at PMR&C when the Commission just approved a license for Osceola which is expected to generate $28 million. Mr. Farinella stated that the original estimates for revenues at PMR&C were $120 million per year. This figure included revenues generated from table games and all other casino games. He noted that PMR&C had generated $127 million during FY97 just from slot machines. He noted that the two most recent studies done in 1997 address 1500 machines at PMR&C and also included potential revenues from Osceola. The study concluded the market was large enough to support both gaming venues.

Commissioner Peyton asked if there had been any discussion with Polk County on how RACI/PMR&C could avoid paying for the improvements twice. Mr. Flynn indicated there had not been any discussions. He acknowledged the risk they are taking. Commissioner Peyton noted that leaseholders make improvements to property, but the improvements are normally capitalized over the length of the lease. Mr. Flynn noted that under an arm's length negotiation between a landlord and tenant, this transaction would not be contemplated without a concrete right to buy the property. He noted that after weighing all the pros and cons, RACI/PMR&C concluded that in order to meet all of the various interests and concerns this project was necessary.

Mr. Farinella pointed out that RACI is a not-for-profit corporation. It is their goal to make sure that the profits are returned to the community. They have elected to invest in this particular property whether or not there is a negotiated agreement that is different than it is today. The revenues generated by the business are being used for public purposes and the facility is available for public purposes. Commissioner Peyton asked Mr. Farinella if he saw a problem in transferring substantial assets to a non-licensee. He noted that Polk County is a public entity and is entitled to them if RACI/PMR&C makes that decision. Mr. Farinella pointed out that the revenues generated at their facility are returned to the public via charitable giving. Commissioner Peyton reiterated that RACI would be transferring assets to a non-licensee. The statute requires the licensee to distribute its funds in accordance with the statute. Mr. Farinella noted that for continued economic benefit to the community, it is better for PMR&C to remain in the existing location versus relocating the business from the standpoint of the benefits to the taxpayers of Polk County.

Commissioner Allen addressed Mr. Flynn's comments that RACI/PMR&C felt the Commission would look favorably upon their expansion request after granting Harveys' request for 300 slot machines. She noted that of the 300 machines, 184 were for the third floor expansion, and another 100 would be used to replace existing machines. She asked if there was any way PMR&C could reduce the number of slot machines. She noted that during the last six-month period, gambling patrons lost $63 million at PMR&C. She feels some of those funds could be used to finance the proposed project.

Mr. Flynn stated that when PMR&C viewed the Harveys' vote with hope, they were not aware that some Commissioners were making distinctions between land-based casinos and the riverboats. He noted that during the process of putting the proposed project together, 350 additional slot machines was determined to be the optimal number to allow PMR&C to reach its goals. Mr. Farinella indicated that PMR&C could reduce the number of requested machines by 10% which would reduce the amount of reserve left over at the end of five years.

Following a short break, Commissioner White asked Mr. Farinella if he expected the additional slot machines to increase the revenue. Mr. Farinella stated the additional revenue will come from two places: customers who are presently at the facility that are not accommodated at the present time because of a shortage of machines; and during the racing season, when there are approximately 5,000 more people in the facility, there is no change in the activity as PMR&C does not have sufficient machines to satisfy the demand. The facility is also lacking other amenities that can be found at other gaming locations.

Commissioner White agreed that improvements to the facility were needed. He asked if PMR&C had approached Polk County in an attempt to get some of the improvements. Mr. Farinella advised Commissioner White that RACI/PMR&C had presented a project to Polk County in 1996, but the County turned down the request. Commissioner White stated that PMR&C has had the revenue to make these improvements, but has failed to do so. Mr. Farinella noted that under the Operating Agreement, all excess revenue was paid to Polk County; therefore, PMR&C did not have any way to funnel funds back into making improvements on the facility. He noted that this situation has improved with the lease negotiated between Polk County & PMR&C. Commissioner White feels that PMR&C could have repaid the debt at a slower rate, and used some of the revenues to make improvements to the facility. In his opinion, the existing slot machines are generating sufficient revenues to finance the proposed project.

Commissioner Hansen noted that when the allocation of resources in their proposal is broken down, 44.5% of the resources are allocated to racing, 35% toward administration, and 20.5% to the gaming portion of the facility. This indicates that approximately 80% of the project is going in the direction the Commission supposedly approves. Commissioner Hansen feels this project needs to be looked at as a business decision. In reviewing the projections, if the improvements were done without benefit of the additional machines, their bottom line over a five-year period would indicate a $37 million deficit. If the improvements were made with the additional slot machines, their bottom line would show approximately $8.6 million. PMR&C's net income would about triple with the addition of the slot machines.

Hearing no further comments, Chair Sealock requested a motion. Commissioner Peyton indicated his desire to make the same motion made by Commissioner White at the November meeting, and specifically denying the request for those items previously excluded by that motion. He requested that the following reasons for denying the request be incorporated into the motion:

- Based on market studies conducted by Christiansen/Cummings Associates, Inc. in October 1995 and with the pending opening of the Clarke County facility, he does not feel the market is sufficient to accommodate the additional slot machines;
- He believes allowing this racetrack enclosure to expand for the purpose of adding additional slot machines is inconsistent with the legislative intent;
- It is contrary to the Order entered by the Commission in September which requires a diligent effort on PMR&C's part to contribute at least 50% of the excess revenues to the public/charitable entities;
- To construct a project of this magnitude on property not owned by the licensee constitutes a transfer of significant assets to a non-licensee; and
- Does not feel there is public support for the expansion of gambling at this facility.

Commissioner White seconded the motion. He then asked Commissioner Peyton if a "yes" vote to this motion would preclude PMR&C from negotiating with Polk County to use some of the rent money to make improvements at the facility and bringing that proposal before the Commission in March. Commissioner Peyton indicated it did not.

Chair Sealock asked if there was any further discussion. Commissioner Hansen offered a substitute motion to approve the architectural agreements with Leo Daly with the additional improvements subject to a 10% reduction in the number of slot machines requested.

At this time, Chair Sealock asked Commissioner Peyton to assume the role of Chair so that she could second Commissioner Hansen's motion. Commissioner Peyton agreed. Chair Sealock seconded the motion. Acting Chair Peyton called for any discussion regarding the substitute motion.

Commissioner White stated that he feels the improvements are necessary, but the responsibility for making those improvements lie with the landlord and tenant. In his opinion, the landlord and tenant should share the responsibility of making sure the employees have a safe environment in which to work. Commissioner White started to make a motion, but was advised he was out of order as a substitute motion was already on the floor.

Hearing no further discussion regarding the substitute motion, Acting Chair Peyton called for a roll call vote. Commissioner White asked for clarification of the motion on the floor: The motion is to approve all of the improvements requested with a 10% reduction in the number of machines requested. The motion was defeated on a 3-2 vote. Acting Chair Peyton and Commissioners White and Allen voted no. (See Order No. 98-5)

Acting Chair Peyton returned the gavel to Chair Sealock.

Chair Sealock called for any additional motions to be considered regarding this issue. Commissioner White again stated that he feels RACI needs to fund the improvements. He noted the Commission authorized the addition of 50 slot machines in November. He

noted that one possible source of funding would be for Polk County to agree to use a portion of the $12 million they will be receiving in rent payments from PMR&C.

Commissioner White moved to table this agenda item until the March meeting, thus giving Polk County and RACI time to meet to discuss this issue. This would also allow PMR&C an opportunity to determine whether or not a scaled down version of the project could be funded with the revenues generated by the additional 50 slot machines and concessions from Polk County regarding the use of rent funds. Commissioner Allen seconded the motion. Chair Sealock requested a roll vote. The motion carried on a 3-2 vote, Commissioners Hansen and Peyton voting no. (See Order No. 98-6)

Commissioner Peyton noted that he did not feel Polk County had any obligation to make improvements at PMR&C. He indicated that he did not feel the Commission would object if they came before the Commission indicating specific improvements to the facility to improve working conditions for the employees. Commissioner Peyton stated that he resented PMR&C using the addition of 350 machines being used to take care of employees. He feels PMR&C should take care of their employees first, and then consider the possibility of adding additional slot machines.

Chair Sealock moved to RACI/PMR&C's request for approval of the Amended Lease between Polk County and RACI. Mr. Flynn indicated his desire to withdraw this agenda item in light of the action just taken by the Commission.

Commissioner White asked if there is an actual lease that has been approved by the Polk County Board of Supervisors. Mr. Flynn advised him that the Supervisors had approved the lease, but learned of a technicality that required them to hold a second hearing regarding the lease. He noted that if the amendment before the Commission is not approved, then RACI/PMR&C would not have a lease with Polk County.

Commissioner White noted that the Commission had approved the original lease with certain changes. Mr. Flynn stated that the parties did not understand the Commission wanted the lease redrafted. They understood the lease to be approved with the three changes.

Commissioner White asked if the County voted at their meeting to approve the lease following the public hearing held in December. Mr. Flynn stated that the Polk County Supervisors voted to approve the lease with the amendment currently before the Commission. Commissioner White asked why Mr. Flynn felt he needed to withdraw this item from consideration. Mr. Flynn stated that PMR&C made numerous changes in the way they were going to operate based on the 5-year plan. He indicated the need to re-evaluate the entire situation with Polk County. PMR&C has been paying rent to Polk County and is not forwarding any profits to them. They are operating as if the lease is in effect. Commissioner White reminded Mr. Flynn that the license was conditioned upon the fact that Polk County and RACI would enter into a lease agreement. Mr. Flynn requested the ability to continue to operate until the March meeting, giving them an opportunity to determine what they want to do.

Commissioner Peyton asked how the Commission could approve an amendment to a lease that does not exist. Mr. Flynn advised Commissioner Peyton that all parties had signed off on the original lease as presented to the Commission. Commissioner Peyton noted that Mr. Flynn had stated that it was not effective. Commissioner White, noting that a public hearing had been held, asked if there were minutes of the hearing indicating the vote. Mr. Flynn indicated he did not have the minutes with him, but noted that the Polk County Attorney was present and could corroborate his statements.

Commissioner Peyton suggested that Polk County and RACI/PMR&C get a signed lease. He stated that he did not feel Polk County should be put in the position of renegotiating the lease without having a lease in effect. He does not feel RACI should be able to use the fact that there is no lease in effect in order to get concessions from Polk County. Mr. Flynn stated that RACI's concern is not in gaining concessions from Polk County, but whether or not they will be able to fulfill the terms of the lease. Commissioner Peyton asked Mr. Flynn if he was suggesting that a lease might not be executed at all. Mr. Flynn acknowledged the possibility of returning to the Operating Agreement. Commissioner Peyton again reminded Mr. Flynn that the license was contingent upon a lease being in effect.

Mr. Flynn again requested that RACI/PMR&C be allowed to withdraw this agenda item without prejudice, which would allow them to bring this issue back before the Commission. He indicated that it is RACI's intent to proceed under the terms of the lease. Chair Sealock advised Mr. Flynn that the Commission would grant his request.

Chair Sealock called on William Grace, President of Southern Iowa Gaming Co. Mr. Grace requested that the approval of the Amendment to the Agreement and Lease with the City of Osceola be deferred until the March meeting as there are a few details still to be worked out. The Commission granted the request.

Regarding the financing of the project, Mr. Grace requested that the Commission approve the proposed financing arrangements with Newcourt Capital Group and Dougherty Funding. He requested the Commission approve their financing in the event they do not proceed with either of the above offers as long as they are within the confines of these proposals. Southern Iowa Gaming is also working extensively with southern Iowa banks. Mr. Grace stated he was asking for approval prior to the submission of the finalized documents to allow him to invest equity money at this time.

Hearing no further comments or questions, Chair Sealock requested a motion. Commissioner Peyton moved to approve financing proposals consistent with the terms set forth in the proposals presented to the Commission subject to approval of final documentation by the Commission. Commissioner Allen seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-7)

Chair Sealock requested a status report from Mr. Grace. He advised the Commission they were within four or five days of having the surveys completed. Mr. Grace stated

they are in the process of taking bids for the major engineering contracts, and should have those before the Commission for approval in March. They are attempting to resolve issues with landowners in the area.

Chair Sealock then called on Jeff Terp, Vice President of Business Development for Ameristar Casinos who presented the following contracts for Commission approval:

- Allegiant Group, Inc. – Computer-related Upgrade
- Andersen Construction Co. – Emergency Construction of Temporary Ramp between Land and Casino
- Atronic Casino Technology, Ltd., LLC – 16 Video Slot Machines (Replacement)
- Atronic Casino Technology Ltd., LLC – Lease/Purchase 30 Slot Machines (Replacement)
- Casino Data Systems – 20 Video Slot Machines (Replacement)
- Goldberg, Mosser, O'Neill – Agreement to Provide Services for New Advertising Program
- Inter-American Data, Inc. – Computer Conversion in Hotel/Accounts Receivable Database
- International Gaming Technology – 33 Slot Machines (Replacement)
- International Gaming Technology – 18 Slot Machines (Replacement)
- Logical Solutions International, Inc. – Computer Conversion in Casino/Cage/Players Club
- Mikohn Gaming Corporation – Slot Signage for Casino
- Williams Gaming, Inc. – 10 Slot Machines (Replacement)
- Williams Gaming, Inc. – 18 Video Slot Machines (Replacement)
- Unitog – Uniform Cleaning
- See Attached Listing for Additional Contracts

There was a brief discussion concerning the contract with Andersen Construction Co. for the temporary entrance ramp. Commissioner White requested that Ameristar submit the final bills and itemized statements for the temporary ramp. Hearing no further comments or questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve the above contracts as submitted by Ameristar Casinos subject to the conditions expressed by Commissioner White regarding the Andersen Construction contract. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-8)

Chair Sealock then moved to Ameristar's request for approval to remodel the casino and add 60 slot machines. Mr. Terp advised the Commission that at the time the riverboat licenses were granted in Council Bluffs, a Christiansen/Cummings market study estimated Council Bluffs' market share to be between $150 - $180 million. Ameristar estimated that it would be approximately $225 million. Mr. Terp noted the market size in 1996 was $252 million and $267 million in 1997. Depending on the percentage used to estimate the market growth in 1998 (1% or 5%), the market will be between $270 - $280 million. The Council Bluffs market share breaks down as follows for the last six months: Ameristar – 28.74% (1,012 slot machines + 43 table games); Harveys (prior to

expansion) – 33.07% (900 slot machines, + 184 new slot machines, 55 table games) and BRC – 38.19% (1,228 slot machines). Mr. Terp stated the additional machines are needed to handle the crowds during peak hours. They will be using existing floor space, and will reposition some existing machines. The estimated cost of the renovation is $5,000.

After a brief discussion of the proposed plans, Chair Sealock called for a motion regarding Ameristar's request to remodel their casino and add 60 slot machines. Commissioner Hansen moved to approve Ameristar's request. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 98-9)

Chair Sealock moved on to Contract Approvals. She called on Otto Schrunk, Controller of the Belle of Sioux City (BSC), who presented the following contracts for Commission approval:

- Argosy Gaming Co. – Various Inter-company Charges (April-Oct. 1997)
- Argosy Gaming Co. – Property & Liability Insurance Coverage
- Altman Software – Computer, Printers, Computer Support
- General American Life Insurance Retirement Services – 401K Retirement Plan
- Seafarers Entertainment and Allied Trades Union – Per Hour Union Member Fee
- WM Bass Advertising and Assoc. – Advertising

Hearing no comments or questions regarding the above contracts submitted by the BSC, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted by BSC. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-10)

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

- Angelica Image Apparel – Apparel for Costume Program
- Cummings-Allison Corp. – Supplier for Token/Coin Sorters – Repairs & Service
- General Contractors – Change Order Re: Porte Cochere and Ramp
- Wasker Dorr Wimmer & Marcouiller – Legal Services & Legislative Monitoring Services

Hearing no comments or questions regarding the contracts submitted by The President Riverboat, 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. 98-11)

Chair Sealock called on Art Hill, Controller of Harveys Kanesville Queen (Harveys), who presented the following contracts for Commission approval:

- Aristocrat, Inc. – 8 Multi-coin Slot Machines (Replacement)
- Williams Gaming Inc. – 17 Multi-coin Slot Machines (Replacement)

- Andersen Construction – Construction of Gift Shop
- Aristocrat, Inc. – 20 Slot Machines for Third Level Casino Expansion
- IGT – 111 Slot Machines for Third Level Casino Expansion
- Jtronics, Inc. – Surveillance Equipment & Installation to Comply/Conform for Third Level Expansion
- Lucent Technology – Telephone Equipment & Installation of Data and Voice Cabling in Conjunction with Casino Expansion
- Mobile Communications – Motorola Radio Equipment for Operations & Regulatory Staff
- Pinnacle Construction – General Contractor for Third Level Expansion of Riverboat
- VSR Lock Company – Locks & Stands for Slot Machines to be Installed in Third Level of Casino Expansion
- Williams Gaming, Inc. – 46 Slot Machines for Third Level Casino Expansion

Mr. Hill noted that nine of the eleven contracts submitted relate to the additional slot machines and casino expansion.

Commissioner Allen questioned Verne Welch, General Manager of Harveys, about the contract with Andersen Construction Company for the new gift shop. Mr. Welch indicated six bids were received for the project, but Andersen was the only bidder who would guarantee completion in 90 days.

Hearing no further comments or questions, Chair Sealock requested a motion. Commissioner Peyton moved to approve the contracts as submitted by Harveys. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-12)

Chair Sealock called on Doug Gross, legal counsel for Dubuque Diamond Jo (DDJ), who presented an Addendum to the Letter of Intent with Cambridge Iowa Gaming Co., L.C. The Letter of Intent extends some of the dates contained in the original Letter of Intent approved at an earlier meeting.

Following a brief discussion regarding Item 6 in the Letter of Intent, Chair Sealock called for a motion. Commissioner Peyton moved to approve the Addendum to the Letter of Intent as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-13)

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

- Bensinger's Food Service Equipment – Purchase of Kitchen Equipment
- Floorcrafters – Purchase of Carpet/Tile for Boat and Barge
- Frank Millard and Company, Inc. – HVAC and Refrigeration System for Boat and Barge
- Gary Hoyer Law Firm – Legal Services

- Glasgow Clothiers, Inc. – Purchase of Uniforms for CBC Employees – Increase in amount approved for 1997
- Glasgow Clothiers, Inc. – Purchase of Employee Uniforms (1998)
- Hall Towing, Inc. – Docksite Improvements and Pier in Ft. Madison, Removal of Fire Debris from Barge, Building of Ramps, Mooring of Barge (Increase in amount previously approved)
- Jet Gas – Purchase of Boat Fuel (Increase in amount previously approved)
- Jet Gas – Purchase of Boat Fuel (1998)
- Keystone Do-It Center – Purchase of Building Materials and Hardware Supplies (1997)
- Keystone Do-It Center – Purchasing of Building Materials and Hardware Supplies (1998)
- Kidder Benefits Consultants, Inc. – Plan Administrator for 401k Plan
- Marsh & McLennan, Inc. – Purchase of Marine, Worker's Compensation, Auto, Contents and Water Pollution Insurance
- Mississippi Belle II – Cost of Food and Food Preparation for Buffet & Deli
- Norm's Koestner Electric, Inc. – Electrical Work for Boat and Barge (Increase in amount previously approved.)
- Pzazz Motor Inn Resort Complex – Reservation of Motel Rooms for Players Musicians, etc.
- Reinhart Food Service – Purchase of Food Product and Supplies
- Rheinschmidt's, Inc. – Purchase of Carpet and Wallpaper
- Self Insured Service Company – Health Insurance
- Stanley Consulting, Inc. – Architectural Drawings of Various Docksites in Burlington
- State of Iowa – Lease of Office Space to DCI
- Thoms, Proestler, Inc., dba TPC – Purchase of Food Products
- U.S. Postal Service – Lease of Office Space from Post Office for DCI

After a brief discussion concerning the last contract, Commissioner Peyton moved to approve the contracts for Catfish Bend Casino as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-14)

Chair Sealock then moved to the contracts submitted by Lady Luck Bettendorf, L.C. Curt Beason, legal counsel, presented the following contracts for Commission approval:

- AT & T – Hotel PBX System
- ComTech Security, L.C. – Hotel Surveillance System
- Targeted Specialty Services, Inc. – Hotel Buffet Equipment

After a brief discussion concerning the security contract, Chair Sealock called for a motion. Commissioner Allen moved to approve the contracts as submitted by Lady Luck Bettendorf. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-15)

Chair Sealock called on Doug Okuniewicz, Director of Operations for Bluffs Run Casino (BRC), who presented the following contracts for Commission approval:

- American Lift & Sign Service – Install Additional Signage on Building to Match Existing Signage
- Mid American Energy – Electrical Utility Costs
- Redland Insurance Company – Real & Personal Property, General Liability, Liquor Liability and Garage Keeper Liability
- Royal Insurance Company of America – Liability Umbrella Insurance Policy

Commissioner Peyton asked if all of the bids for the insurance coverage granted to Redland Insurance Company were based on the same exact coverage. Mr. Okuniewicz indicated they were.

Hearing no further comments or questions regarding the contracts submitted by BRC, Chair Sealock requested a motion. Commissioner Hansen moved to approve the contracts as submitted by BRC. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 98-16)

Chair Sealock moved to Administrative Business. Mr. Ketterer advised those in attendance that the next meeting would be on March 5, 1998 at the Gateway Holiday Inn in Ames, Iowa. He noted the Commission would be addressing the license renewals of all of the riverboats.

Mr. Ketterer also provided notice that those parties interested in requesting the funds from the Horse Racing Promotion Fund should submit their written requests to the Des Moines office of IRGC by February 13, 1998. Additionally, the Iowa Thoroughbred Owners and Breeders Association and the Iowa Harness Horseman's Association are to submit a written accounting of how they utilized the FY97 funds by February 13, 1998 as well. He noted there is $5,595.28 available for distribution.

As there was no further business before the Commission, Chair Sealock called for a motion to adjourn the meeting. Commissioner Hansen so moved. Commissioner Peyton seconded the motion, which carried unanimously.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS
SECRETARY

IOWA RACING AND GAMING COMMISSION
MINUTES
MARCH 5, 1998

The Iowa Racing and Gaming Commission met in the Central Room, Gateway Center Holiday Inn, US 30 & Elwood Drive, Ames, Iowa, on March 5, 1998. 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 with the following changes: Items 3, 4, 5, and 11 would become 10, 11, 12 and 13 respectively. Commissioner Peyton seconded the motion, which carried unanimously.

Chair Sealock called for a motion regarding the minutes from the January 15, 1998 Commission meeting. Commissioner Allen moved to approve the minutes as submitted. Commissioner Peyton seconded the motion. The motion carried unanimously.

Chair Sealock then called on Jerry Crawford, legal counsel for the Iowa Greyhound Association (IGA). Mr. Crawford addressed the Commission about the IGA's concerns about drug testing procedures for greyhounds. He requested IRGC staff assistance in dealing with drug testing of greyhounds for flunixin. Mr. Crawford noted that due to the increased sophistication in drug tests, drugs formerly tested on parts per million are now being tested on parts per billion. This has resulted in a higher number of positive flunixin tests for both Kansas and Iowa as both states utilize the Iowa State Diagnostic Lab for drug testing. Greyhounds are being fed meat, which contains trace amounts of flunixin. Mr. Crawford stated his main concern is the position the State, the Commission, and individuals involved with the greyhound industry could find themselves in following a major race with a large purse should the winning greyhound have a trace positive flunixin test.

Mr. Crawford noted that Kansas has directed their veterinary staff to no longer report as positive any flunixin tests under 500 nanograms per milliliter by gas chromatography/mass spectrometry. Kansas reached this decision following discussions with other states as to what constituted a therapeutic level of flunixin. He noted that the problem with this approach is that there is no actual research stating that flunixin levels under "X" are non-therapeutic. IGA has been advised that the cost of performing such a study could be $40,000 - $50,000. Mr. Crawford requested, if the Commission were comfortable with the request, that future flunixin cases be held in abeyance until a decision concerning therapeutic levels could be made following a national study.

Chair Sealock asked Mr. Crawford if other states might be willing to participate in the research, as well as providing some funding. Mr. Crawford indicated that he had talked with individuals at Kansas State Racing Commission and requested information on this issue. He feels this is one reason Kansas acted the way they did in establishing a flunixin

level. He noted that Dr. Walter Hyde at the Iowa State Diagnostic Lab had attempted to put together a consortium to fund this research, which will have a national impact. Mr. Crawford stated that he does not feel that Iowa, let alone one specific organization within the State, should be responsible for funding this type of research.

Jack Ketterer, Administrator of IRGC, stated that staff and officials empathize with the trainers; however, the trainer is the one who ultimately has control over the greyhound. He noted there is some evidence that withholding meat as a snack just prior to racing is one way of handling this problem. The issue is how does IRGC determine whether the flunixin present is from the food chain or administered as an anti-inflammatory. He stated that he was supportive of the research. He did not feel the Commission should just pick a number or level at which flunixin would be considered non-therapeutic in order to avoid the issue without support research. Mr. Ketterer expressed some concern about putting the hearings on hold until the research was completed. He felt there needed to be some type of time frame established. He asked Jeff Farrell, Assistant Attorney General for IRGC, for his opinion on the matter. Mr. Farrell stated that he felt a time frame needed to be established for concluding the hearings or resolved through the study. Mr. Ketterer suggested that Mr. Crawford and Mr. Farrell discuss the matter and give a brief report at the next Commission meeting.

Commissioner White asked Mr. Crawford if there was any way to screen the meat after it arrived at the track. Mr. Crawford stated there was no practical way for that to occur. Commissioner White asked if Mr. Crawford would submit data from Kansas showing research conducted to establish the flunixin level in that state. Mr. Crawford stated that a census had been taken of the industry, as opposed to data, and Kansas then promulgated their position on the census versus a scientific opinion.

Dr. Sally Prickett, State Veterinarian at Bluffs Run Casino, stated that Mr. Crawford had raised some valid concerns. She noted that flunixin is a potent anti-inflammatory analgesic. This drug is cleared for veterinary use in horses only in the United States. Racing chemists can not determine the source of flunixin when it is found in a drug test. The solution is funding for research, which could determine a trace level, or a number above which flunixin is pharmacologically active, meaning the concentration is great enough to affect the performance of a greyhound. This level would correspond to a flunixin positive.

In addressing Commissioner White's request for research data, Dr. Prickett stated that no research has been done in the United States or the world on this issue. She noted that she has been on a Quality Assurance Panel through the Association of Racing Commissioners International for a number of years, and has asked for funding to address this problem every year.

Commissioner White asked who has the responsibility for establishing drug levels. He stated that he felt the Commission had some obligation to provide some funding for research on this issue.

Dr. Walter Hyde, ISU Racing Chemistry Lab, stated that the difficulty with the tolerance levels established for most drugs is that the levels were not based on research or a scientific basis to begin with. He noted that he had presented information to various individuals and the Commission regarding the funding of a $24,000 study to arrive at a scientific threshold for flunixin. Dr. Hyde stated that when a threshold is established for a drug, historically, the number is pulled out of the air based on anecdotal information, or useful information has been pulled from one or two studies. He stated that he would like to be a part of the solution. Dr. Hyde stated that he would like to be able to advise the Commission whether or not flunixin is pharmacologically active in the greyhound. He indicated the tolerance level needed to be based on scientific information, not just establishing a number that will artificially correct the situation.

Commissioner White asked Mr. Ketterer if the Commission had funds available to finance this study. In his opinion, the Commission is almost compelled to adopt the tolerance levels established by other states as a stopgap measure until the study can be completed. Mr. Ketterer advised Commissioner White that only four states have established flunixin tolerance levels. He went on to note that the Commission does not have a budget line item for research.

Dr. Hyde discussed two different methods that could be used to determine a tolerance level for flunixin. He advised the Commission that the cost of the study to determine a safe pharmacological level for flunixin would cost $24,390. Commissioner White requested that staff look into ways to fund a study to determine the pharmacological level at which flunixin is safe for greyhounds.

Chair Sealock called on Bruce Wentworth, General Manager of Dubuque Greyhound Park & Casino (DGP&C), to present their 1998 Season Approvals. DGP&C has requested racing dates of May 1 through October 25, 1998. They will hold six performances per week with evening performances on Thursday, Friday and Saturday and afternoon performances on Wednesday, Saturday and Sunday. Additional performances will be held on May 24 and 25, July 3, and September 6 and 7. He noted they have contracted with the same 14 kennels that raced at DGP&C last year. They have commenced improvements to the kennel compound.

Following a brief discussion regarding the racing dates, Chair Sealock called for a motion. Commissioner Hansen moved to approve the 1998 Season Approvals for DGP&C. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 98- 17)

Chair Sealock moved to the second agenda item regarding DGP&C. Mr. Wentworth introduced Jim Heckman, President of Dubuque Racing Association (DRA), who presented DRA's request to reconfigure existing casino space to allow for the addition of 45 slot machines. By removing a wall, they will be reconfiguring about 4,000 square feet, with approximately 1,400 square feet being used for gaming. The remaining space will be used to reconfigure a restroom area and kitchen area used for food service on the west end of the building. He noted that 7 ½% of casino revenues are used to supplement

greyhound purses, which puts DGP&C in the top quarter of all greyhound tracks for money returned to greyhound owners. DRA returns 50% of profits to the city's capital improvement fund, 25% goes directly to charities, and the DRA retains the other 25% for projects such as the one under discussion.

Mr. Heckman noted that the Commission approved the Ninth Amendment to the Operating Agreement between DRA and the Greater Dubuque Riverboat Entertainment Company (GDREC). The amendment anticipated that both entities would have a specific number of slot machines. The additional slot machines being requested at this time would bring DRA to the maximum allowed under the Operating Agreement.

Commissioner Peyton asked Mr. Wentworth if the additional slot machines were an expansion or an increase in machines to meet the additional number of patrons due to the closing of the Silver Eagle in Illinois. Mr. Wentworth stated that the market has grown by approximately 16%, while the number of gaming devices is 15% lower than market demand. Commissioner Peyton noted that the Christiansen/Cummings report issued in 1995 estimated that the market would be around $50+ million; however, between DGP&C and Dubuque Diamond Jo, they have exceeded $54 million. Mr. Wentworth stated that DGP&C was very conservative when preparing their original revenue estimates.

Commissioner Peyton stated that he was trying to determine at what point the market area would become saturated; and at what point DGP&C is growing the market versus cannibalizing customers from other existing markets? Mr. Wentworth stated that the additional machines only represent a 3.7% increase in the total number of machines in a market that has grown by over 16%. He feels the market is less saturated now than it previously was.

Commissioner Peyton moved to approve the request of DGP&C to reconfigure existing casino space to add 45 slot machines, subject to the approval of any contracts ordinarily required. Commissioner Hansen seconded the motion.

Mr. Wentworth asked if the above motion included approval of the contracts submitted with the request. Commissioner Peyton moved to modify his motion, with the consent of Commissioner Hansen, to include the approval of the contracts submitted with the request. Commissioner Hansen concurred.

Hearing no further discussion, Chair Sealock requested a roll call vote. The motion carried 5-0. (See Order No. 98-18)

Chair Sealock then moved to the contracts submitted by DGP&C. Mr. Wentworth submitted the following contracts for Commission approval:

- Frank Hardie Advertising, Inc. – Billboard Advertising
- Interspace Airport Advertising – Advertising at Dubuque Regional Airport

- Request to upgrade Parking Area in Kennel Compound – Funds to come from the Depreciation and Improvement Fund

Hearing no discussion concerning the contracts, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted by DGP&C. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-19)

Chair Sealock called on Southern Iowa Gaming. Larry Seckington, legal counsel, submitted a contract with Devine deFlon Yaeger Architects for architectural and engineering services for project construction in Osceola. The contract is for $700,000. The price includes a team of engineers from Kansas City, MO, as well as the Howard R. Green Company, which is based in Iowa. Mr. Seckington advised that this contract does not include the ramp, bridge or the new interstate exchange.

As there was no discussion concerning this contract, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contract as submitted by Southern Iowa Gaming. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-20)

Mr. Seckington advised the Commission that Southern Iowa Gaming had acquired all of the land necessary for the project. He feels an agreement has been reached with the Ioaw Department of Transportation on the ramps, subject to that Commission's approval in April. They are still in the process of fine-tuning the Lease with the City of Osceola, but hope to have the finalized Lease before the Commission for approval at the April Commission meeting. Mr. Seckington noted that a consortium of banks, two or four will be Iowa banks, will be financing the project. The loan papers will be drafted as soon as the amounts the various banks will loan has been determined. Commissioner Hansen confirmed that the Commission would be provided a list of all banks involved in the financing. Mr. Seckington indicated that was an accurate statement. He noted there would be five to seven banks involved in the financing of the project.

Commissioner Peyton asked how the issues had been resolved with the surrounding property owners. Mr. Seckington advised that meetings had been scheduled for mid-February, but were canceled due to weather conditions. He attempted to meet with them earlier in the week, but due to short notice, that meeting did not take place. He has met with their attorney. They are attempting to get an appraisal of the property.

Following a short break, Mr. Ketterer made a few comments regarding Terry Allen, IRGC's Gaming Representative assigned to Catfish Bend Casino who passed away prematurely. He noted that Mr. Allen started his career with IRGC in 1985 when he was hired as a Presiding Judge for the county fair pari-mutuel harness meet. Mr. Allen was a steward at Prairie Meadows Racetrack & Casino (PMR&C) until 1994 when he transferred to the gaming side. Mr. Ketterer noted that Mr. Allen maintained strict standards for the rules. He served on a task force that developed a procedure manual for the Gaming Representatives. He will be missed.

Chair Sealock called on Frank Biagioli, Executive Director of the Iowa Gambling Treatment Program. He stated that the program continues to receive good support from the licensees. The riverboat licensees work well with the local area providers. He noted that all licensees have demonstrated a commitment to addressing problem gambling. Mr. Biagioli noted that some of the facilities have already linked up with the web page established by the Iowa Gambling Treatment Program. He noted that a number of the licensees were represented during a meeting held via the Iowa Communications Network in January. All of the licensees display, as well as provide materials to those individuals who have a gambling problem. The gaming industry has placed a strong emphasis on preventing underage gambling, and a number of licensees have adopted Project 21.

Commissioner Hansen asked Mr. Biagioli why the Legislature is trying to curtail the funding for the Iowa Gambling Treatment Program. Mr. Biagioli indicated that he did not know. Chair Sealock asked Bob Farinella, President of the Gaming Association of Iowa, for his comments on this particular issue. Mr. Farinella stated that funding should be maintained for the program. He indicated that the association would be interested in meeting with the Legislature to present some ideas on ways to increase the effectiveness of the program in Iowa.

Commissioner White stated that he felt it was somewhat cynical that the State legalized gambling to begin with, and now wants to cut funding for the program that provides help for those individuals with gambling problems.

Commissioner Hansen moved to pass a resolution stating that the Commission supports the existing Gambling Treatment Program and the current funding level. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-21)

Chair Sealock then moved to the Excursion Gambling Boat License Renewals. She called on Missouri River Historical Development, Inc/Belle of Sioux City, L.P., the license holders for the Belle of Sioux City (BSC). John Pavone, General Manager of BSC, began his presentation by offering the assistance of the Iowa Riverboat Association in helping to maintain the current funding level of the Iowa Gambling Treatment Program. He noted that the gaming industry is one of the few industries doing something about the problems it creates.

Mr. Pavone requested the approval of their license renewal, as well as $600,000 of capital improvements to the facility. These improvements would be the first phase in an approximate $2 million of improvements to the facility this year. Mr. Pavone also submitted the following contracts for Commission approval:

- Argosy Gaming – Inter-company Charges for November/December 1997
- Argosy Gaming – Inter-company Charges for January 1998
- Aristocrat Inc. – Lease/Purchase of 10 Slot Machines (Replacements)
- International Game Technology – IGT Gaming System, IGS Upgrade, including Software, Hardware, Installation and Training. Annual Maintenance Contract.

- Video Lottery Consultants, Inc. – Purchase 10 Slot Machines and Related Equipment (Replacement machines)
- Wilkes Direct Mail – Direct Mailing Expense for 1998, including postage
- Williams Gaming Inc. – Purchase of 10 Slot Machines; Conditional Purchase of 4 Slot Machines following 90-day Trial Period (All replacement machines)

Commissioner Peyton asked Mr. Pavone about the capital situation of BSC, L.P., and how they intended to pay for the capital improvements. Mr. Pavone stated that the improvements would be paid for by short-term capital leases from Argosy. He noted that the BSC had its best year ever in 1997. The improvements will include equipment, additional parking, and complete renovation of the casino interior. Mr. Pavone noted that the BSC partnership does not have any debt. Commissioner Peyton asked Mr. Pavone if he expected the net income to exceed $2 million. Mr. Pavone confirmed that he did.

Mr. Pavone stated that he hoped to come before the Commission within the next 60 days and ask for approval to purchase 150 new IGT slot machines to replace existing equipment. Commissioner Peyton asked Mr. Pavone if the earnings would offset the additional liabilities. Mr. Pavone indicated they would. He noted the slot machines on BSC are averaging approximately $40 per day less than any other facility in Iowa. A third of that, $15-$16 per day, would equal almost $4 million.

Commissioner Peyton asked Mr. Pavone if he had any estimate of the net worth at the end of 1997. Mr. Pavone indicated that he did not. He advised that BSC had increased their revenue by 2 ½ times the EBITDA number from the previous year.

Commissioner White asked when the audit would be available. Mr. Pavone indicated that he felt it would be available within the next 10-15 days. Commissioner White asked Mr. Pavone how much of the proposed improvements depend on the approval of the 150-replacement slot machines. Mr. Pavone indicated the capital improvements and the slot machines are separate issues. Commissioner White asked Mr. Pavone if any of the contract approvals before the Commission today rely on the revenues from the replacement machines. Mr. Pavone indicated they did not.

Commissioner Peyton stated that he would like to reserve the right to review the audit for 1997. He noted that if 1997 was equal to 1996, the operation would be insolvent. Commissioner Peyton stated that he was uncomfortable granting a license for a year knowing the potential is there for the licensee to be insolvent. Commissioner White asked if the approval could be conditioned upon the submission of the 1997 audit prior to the April Commission meeting.

Commissioner Peyton moved to approve the license renewal, including the contracts, subject to the Commission's review of the 1997 audited financial statement at the earliest possible date. Commissioner Hansen seconded the motion. Chair Sealock requested for a roll call vote. The motion carried unanimously. (See Order No. 98-22)

Chair Sealock then called on Southeast Iowa Regional Riverboat Commission (SIRRC)/Catfish Bend Casinos, L.C., the license holders for Catfish Bend Casino. Bob Winkler, Assistant General Manager, introduced David Walker, a member of SIRRC. Mr. Walker advised that the current framework of three-city/two county coalition forming the non-profit license holder is working well. He noted that the expanded facilities and amenities of the larger vessel have achieved the goals of the non-profit organization when they originally sought a riverboat license in the early 1990s.

Mr. Winkler submitted the following contracts for Commission approval:

- Frank Millard and Company, Inc. – HVAC for Kitchen Facility
- Norm's Koestner Electric, Inc. – Electrical Contract Work for Port of Burlington Building, Burlington Docksite and Kitchen Facility
- Celebration Cruise Line – Sale of Catfish Bend Casino I

Commissioner Allen asked if the contract with Norm's Koestner Electric was a related party contract. Mr. Winkler advised the Commission that the question should be answered "no".

Hearing no further comments, Chair Sealock called for a motion. Commissioner Hansen moved to approve the license renewal for SIRRC/Catfish Bend Casinos, L.C., including the contracts. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-23)

Mr. Winkler advised the Commission that Terry Allen was a pleasure to work with, but was tough, fair and consistent.

Chair Sealock called on Dubuque Racing Association/Greater Dubuque Riverboat Entertainment Company, L.C. (DRA/GDREC), the license holder for the Dubuque Diamond Jo (DDJ). Jim Rix, General Manager for DDJ, requested approval of the application for renewal of the riverboat excursion license.

Mr. Ketterer asked Mr. Rix about the status of the Letter of Intent entered into between GDREC and Cambridge Iowa Gaming Company. Doug Gross, legal counsel, noted that the Commission had previously approved the Letter of Intent; however, a vote of the unitholders did not garner the super majority vote required for passage. Some of the issues dealt with the legal issues surrounding the William Alfredo shares. Mr. Gross is expecting a decision from the Judge on the preliminary motions within the next week to ten days.

Hearing no further discussion, Chair Sealock called for a motion. Commissioner Allen moved to approve the renewal application of Dubuque Racing Association/Greater Dubuque Riverboat Entertainment Company, L.C. for the Dubuque Diamond Jo. Commissioner Hansen seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-24)

Chair Sealock then called on Riverbend Regional Authority/Lady Luck Bettendorf, L.C., the license holders for Lady Luck Bettendorf. Nancy Donovan, General Manager at Lady Luck, introduced Patsy Ramacitti, a director for the Scott County Regional Authority. Ms. Ramacitti advised that during 1997 over $3 million in grants was distributed to the three different components they use to divide their grant money – education, government and not-for-profit organizations. Approximately 37% of the grants go to education, about 25% to government and approximately 38% to not-for-profit organizations. During the last grant application process, they received 205 applications, and 62% received funding. The grants went to 18 different communities. Ms. Ramacitti stated that they made two grants last year in collaboration with the Riverboat Development Authority, the non-profit for The President in Davenport. One was for one of the school districts in which a bond referendum had been passed to build new classrooms, but then lacked the equipment to put into the classrooms. The other was for two thermal imaging units, one each for the fire departments in Bettendorf and Davenport. These helmets allow the individual wearing the helmet to see through the smoke of a fire. These are the first two units in Iowa. This project also involved funding from some private businesses, as well as the fire departments.

Commissioner White commented on the fact that the grant application states monies will not be used to fund endowment funds and their conflict of interest policy.

Ms. Donovan provided an update regarding the hotel construction. The hotel will have eight floors, six of which are framed in. The hotel, with 256 rooms, was topped out earlier this week. They anticipate an early September opening.

The opening of the hotel will allow Lady Luck to reconfigure existing casino space by moving the showroom to the pavilion, which would allow for the addition of 125 seats for the entertainment venue. They would like to add approximately 230 slot machines and six table games in the area being vacated by the showroom. Lady Luck currently has 961 slot machines and 44 table games.

Commissioner Peyton asked Ms. Donovan if any market studies had been done which indicated the market was sufficient to support the additional gaming positions. He referred to a Christiansen/Cummings report, which showed that the Quad Cities area was saturated. Ms. Donovan indicated the gaming market had been taken into consideration. She stated that during the last year Lady Luck had added 96 machines to their floor. At the end of February 1997, each unit was averaging $180 win. After the 96 machines were added, the win dropped to $178 per unit. Lady Luck estimates there will be an additional 451 guests on site when the hotel opens. They intend to expand their advertising circle, and add staff in the direct marketing area. Ms. Donovan stated they feel the new machines will do very well.

Commissioner White asked Ms. Donovan if the additional machines and table games were part of the proposal when the hotel addition was presented to the Commission. Ms. Donovan stated that it was her understanding there were some discussions along those lines, but that she was not at the facility when those discussions occurred. Commissioner

White stated that he was more concerned about market studies, financial impact on charitable contributions, and the ratio of table games to slot machines. Commissioner White asked that the approval of the reconfiguration be postponed until the April Commission meeting. In the interim, he requested that Lady Luck prepare a market study, put together some financial projections, and an analysis of the revenue from table games versus slot machines. He stated that he did not feel he had sufficient information to vote on this issue.

Commissioner White moved that the consideration of the reconfiguration of Lady Luck be postponed. Commissioner Peyton seconded the motion. Chair Sealock called for any further discussion.

Commissioner Peyton stated that he agreed with Ms. Donovan's comments that the reconfiguration was discussed when the hotel expansion plans were presented. He also indicated that he felt Commissioner White was correct in requesting a market analysis with regard to viability, not only for Lady Luck, but other gaming operations within the area.

Commissioner Allen asked Ms. Donovan if she had a ballpark figure on the amount of additional revenue Lady Luck expected to generate from the additional 230 slot machines. Ms. Donovan indicated it would be approximately $1 million more per month. It is estimated the win per unit will drop to $165-$170. She noted that the four riverboats in the area have a total of 2,675 slot machines. The additional 230 slot machines would represent an 8% increase in the number of machines available to the patrons. It is anticipated the traffic through the property would increase approximately 10-15%, or about 170,000 to 225,000.

Hearing no further discussion, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-25)

Commissioner Peyton asked Ms. Donovan why Lady Luck was asking to change their cruise time from 7:30 AM to 7:00 AM, and the impact on the licensee's employees and state employees. Ms. Donovan indicated there was a build-up of people between 7:30 and 8:30 AM who came to the facility to eat breakfast and then go on the cruise. The earlier starting time would allow for a better flow of patrons and customer service. She indicated that DCI had indicated they would accommodate the change if the Commission approved it.

Hearing no further discussion regarding Lady Luck's renewal application, Chair Sealock called for a motion. Commissioner White moved to approve the renewal of the license for Riverbend Regional Authority/Lady Luck Bettendorf, L.C. to operate Lady Luck Bettendorf. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-26)

Chair Sealock called on Upper Mississippi Gaming Corporation/Gamblers Supply Management Company (UMGC/GSMC), the license holders for Miss Marquette. Kim

Kreber, Director of Finance for the Miss Marquette, and Randy Lenth, Director of UMGC, were present to answer questions regarding the renewal application. The following contracts were submitted in addition to those contained in the renewal application:

- Ashton Engineering, Inc. – Services related to Possible Parking Expansion and Barge
- Black Hills Agency, Inc. – Insurance Carrier
- Hot Pink, Inc./Franklin & Associates – Additional Expenditures related to Change in Billing Procedures
- Interstate Power Company – Electrical Services
- Midwest Transit Equipment, Inc. – Purchase Shuttle Bus
- Sodak Gaming, Inc. – Casino Supplies
- Sodak Gaming, Inc. – Riverboat Vessel Rent

Chair Sealock stated that she had not been able to determine what time their cruises would be held. Ms. Kreber advised that the cruise would be from 9:30 AM to 11:30 AM due to traffic on the river.

Commissioner Peyton, noting concerns from the previous year about the financial viability of the project, indicated he had a release from Sodak Gaming that showed some write-downs of the assets at the Miss Marquette in the amount of $6 million. He stated that he felt the conditions placed on the license renewal for the BSC were also applicable in this case. Ms. Kreber stated that she did not have any figures regarding the year-end financial audit, but did state that the Commission should receive more information on a stand-alone basis for the Miss Marquette this year.

Hearing no further discussion concerning the license renewal application, Chair Sealock called for a motion. Commissioner Peyton moved to approve the renewal application of Upper Mississippi Gaming Corporation/Gamblers Supply Management Company to operate the Miss Marquette with the condition that the licensee report to the Commission's satisfaction the financial results for 1997 at the April Commission meeting. Commissioner Hansen seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-27)

Commissioner Peyton, realizing the previous motion did not include approval of the contracts listed, moved to approve the contracts as submitted by Miss Marquette. Commissioner Hansen seconded the motion. The motion carried unanimously. (See Order No. 98-28)

Chair Sealock called on Clinton County Gaming Association/Mississippi Belle II, Inc., (CCGA/MB II, Inc.) the license holders for Mississippi Belle II (MB II). Ken Bonnet, President of MB II, introduced Jan Matheny and Elizabeth Snyder, a member and President of CCGA respectively. Ms. Snyder distributed a summary of the grants from 1992 to the present. During that time frame, they have distributed $5.5 million in taxes to

the state, county and city. She noted that 166 non-profit agencies have received funding over the years.

Commissioner Peyton asked Ms. Snyder if any of the grant distributions had gone to organizations outside of Clinton County. Ms. Snyder indicated the Bylaws of CCGC require that the funds be distributed within Clinton County. The reasoning behind this is that the voters of Clinton County passed the referendum allowing riverboat gambling in the county.

Commissioner Peyton noted there is a statutory provision requiring the membership of the qualified sponsoring organization to represent a broad interest of the community, which he has interpreted to the mean the communities actually served by the operation. He asked Ms. Snyder if she felt they were serving all of the communities the facility serves. Ms. Snyder stated the non-profit feels very strongly about their position on this issue. Commissioner Peyton urged the qualified sponsoring organization to consider removing the county restriction on their grant distributions.

Mr. Bonnet addressed the contract with the Clinton National Bank. He indicated that it was not submitted as a related party contract, but advised the Commission that Tom Fullerton, a member of the non-profit organization, is a Vice President at the bank. Chair Sealock indicated it would be considered a related party contract. The following contracts were also submitted for Commission approval:

- Approval of New Certificate of Value per Stock Redemption and Cross Purchase Agreement dated February 1, 1997
- Anchor Games – Lease of Slot Machine on 30-day Free Trial Basis

Commissioner Peyton moved to approve the renewal application of Clinton County Gaming Association/Mississippi Belle II, Inc. to operate the Mississippi Belle II and the contracts as submitted. Commissioner Hansen seconded the motion. Hearing no further discussion concerning the application or contracts, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-29)

Chair Sealock moved to the renewal application submitted by Riverboat Development Authority (RDA)/The Connelly Group, L.P. for The President. Mark Lohman, General Manager of The President, and Mary Ellen Chamberlin, President of RDA, were present to answer any questions. In addition to the license renewal, RDA/The Connelly Group submitted a request to reconfigure the existing casino space to add 66 slot machines and 7 blackjack tables and remove 7 poker tables. They also submitted a contract with Dextours, Inc. for four motor coaches from March through June 1998.

Ms. Chamberlin noted that RDA and CCGA work together on occasion to provide joint funding for projects. Their grant application and distribution processes are on the same time frame. The two groups will meet and review all of the grants received and agree on joint funding for some of those. Other applications are taken up on their own merits by each board.

Commissioner Peyton stated that he would like to see some market analysis to show there is sufficient market to support the additional gaming position. He noted that the Christiansen/Cummings in 1995 showed that the Quad Cities area was saturated at that time. Chair Sealock indicated that it was probably time for the state to have an updated statewide market analysis performed since there have been so many changes since the first one was performed. Commissioner Peyton concurred.

Mr. Lohman advised Commissioner Peyton that space on the riverboat is constrained two days per week, they regularly attract more casino patrons than Lady Luck, and an increased market.

Commissioner Peyton moved to approve the renewal application for Riverboat Development Authority/The Connelly Group, L.P. – The President and the contract with Dextours, Inc. He requested that the request to reconfigure existing casino space be deferred until the April Commission meeting. Commissioner Hansen seconded the motion. Hearing no further discussion, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-30)

The meeting was reconvened at 12:30 PM following a break for lunch. At that time, Chair Sealock called on Iowa West Racing Association/Ameristar Casino Council Bluffs, Inc. (IWRA/Ameristar), the license holders for Ameristar II. Jeff Terp, Vice President of Business Development for Ameristar, and Anthony Payne, Executive Director of IWRA, were available to answer questions. The following contracts were submitted for Commission approval in addition to those contained in the renewal application:

- Atronic Casino Technology, Ltd., LLC – 10 Video Slot Machines
- Bally Gaming, Inc. – 5 Video Slot Machines
- Casino Data Systems – 5 Video Slot Machines
- Game Financial Corporation – Cash Advance Services
- International Gaming Technology – 8 Video Slot Machines
- Williams Gaming, Inc. – 12 Video Slot Machines

Mr. Terp noted that when the Legislature legalized gambling, they wanted to expand economic development, create jobs and promote tourism. He noted that in 1997, Ameristar had $76 million in gaming revenue, 2,179,000 guests, served over 1 million meals, and the hotel had an occupancy rate of 78.8%. They spent over $20 million with Iowa vendors for supplies. Ameristar paid $3.2 million to IWRA, as well as funding over 77 organizations other than those supported by IWRA.

Mr. Payne advised the Commission that during the last six months, IWRA had distributed grants of $4.9 million – 59 grants went to 31 different communities. They distributed a total of $9.1 million in 1997, for a total of $21 million from the beginning. During the last two years, they have disbursed $16.25 million in grants.

Chair Sealock stated that she was disappointed that IWRA had not given more money to the schools in the past. She did note that during the last grant cycle, they gave approximately a half million dollars to the Loess Hills Area Education Agency for distribution to schools to help in establishing ICN rooms. She stated that she was aware IWRA spent a great deal of money funding scholarships for area students. Mr. Payne advised that the scholarship program had been expanded to give $5,000 to 20 students for four years.

Commissioner White asked Mr. Payne about the scholarships as he did not see them listed on the renewal application. Mr. Payne advised Commissioner White that the funds for the scholarships were given to a 501(c)3 organization, the Southwest Iowa Scholarship Foundation Board, who selects the candidates for the scholarships. IWRA does set some of the parameters for receiving the scholarships. Commissioner White asked Mr. Payne if he had a copy of the application form. He indicated that he did not, but that he would obtain a copy for the Commission. Chair Sealock clarified that IWRA does not determine which students will receive the grants.

Commissioner White asked Mr. Payne if IWRA gave $500,000 to the Sac Air Museum in eastern Nebraska. Mr. Payne answered in the affirmative. Commissioner White then asked how the grant provided any benefit to Pottawattamie County. Mr. Payne indicated the museum brought a significant number of tourists to the Omaha/Council Bluffs area. Commissioner White asked if there were any Westcorp board members on the board of the Sac Air Museum. Mr. Payne stated that he did not know. Commissioner White asked if IWRA awarded grants to all of the Iowa organizations that applied for grants. Mr. Payne indicated they did not. Commissioner White stated that he expected the grant application section of the license application to be complete, or at least updated to reflect all of the 1997 grant distributions prior to the meeting. He asked if IWRA was planning to make an additional contribution to the museum. Mr. Payne stated he didn't know, but none was planned to his knowledge.

Commissioner White moved to IWRA's Conflict of Interest policy. He was expecting to see something similar to Riverbend Regional Authority (RRA) in Bettendorf. Commissioner White asked Mr. Payne which board makes the grant distribution decisions. Mr. Payne advised that IWRA board members make those decisions. The board consists of seven members of the Iowa West Foundation. The Board solicits input from Ameristar and Harveys. Commissioner White then asked Mr. Payne if there are IWRA members making grant distribution decisions that sit on the boards of the organizations requesting funds that are successful. Mr. Payne indicated that he did not know of any particular person, but that he would not be surprised if that occurred. Commissioner White stated that he did not see this particular problem addressed in their Conflict of Interest policy.

Commissioner White asked Mr. Payne if IWRA had the following policy in effect: "If the director (IWF) or a member of his/her immediate family is a member of the board of a qualified organization that has submitted a grant, that director shall advise the board of the conflict of interest and shall abstain from lobbying other board members on behalf of

the grant and shall abstain from voting on the application." Mr. Payne stated that it is not a policy, but is a matter of practice. Commissioner White asked Mr. Payne if IWRA had any policies in place similar to those covered in the RRA Conflict of Policy statement. Mr. Payne indicated they did not. Commissioner White stated that when he heard IWRA had given a half million dollars to the Sac Air Museum he wondered if someone on the IWRA board was attempting to get some recognition or garner some special personal recognition. He questioned why someone on the IWRA board would vote to give $500,000 to the Sac Air Museum when there were Iowa grants that were not funded. Commissioner White stated that if IWRA had a Conflict of Interest policy in place it would remove some of the suspicions from the grant process. He expressed concern that IWRA board members were using their clout to funnel grants to organizations they belonged to or were on the board of directors. Mr. Payne stated the museum would be a tourist attraction in the area, much like the Henry Doorly Zoo. Commissioner White stated that he did not want organizations in southwest Iowa that do not receive funding to feel that IWRA is simply passing out money to their friends and charities for their personal benefit, and not for the benefit of the people of Iowa. Mr. Payne took exception to Commissioner White's comment that IWRA board members were deriving a personal benefit from the grant distributions. Commissioner White advised Mr. Payne that he would be amending the motion to require IWRA to adopt a Conflict of Interest policy. At this point, Commissioner Peyton stated that he felt IRGC had a rule requiring the licensees to have such a policy. Jeff Farrell, Assistant Attorney General, indicated that was correct, but that it had just gone into effect. Commissioner White stated that he was concerned about appearances when money was being given to Nebraska organizations while Iowa organizations were being denied.

Chair Sealock asked if there were any questions for Mr. Terp. Commissioner White asked Mr. Terp about the costs for the emergency ramp installed by Andersen Construction. Mr. Terp gave staff a detailed analysis of the costs involved. Mr. Terp stated the final cost was $4, 597. Of that amount, $2,522 was for labor.

Hearing no further comments or questions pertaining to IWRA/Ameristar Casino Council Bluffs, Chair Sealock called for a motion. Commissioner Peyton moved to approve IWRA/Ameristar Casino Council Bluffs' renewal application, including the additional contracts, subject to a written Conflict of Interest policy being submitted, adopted and presented for Commission approval at the next meeting. Commissioner Hansen seconded the motion. Mr. Terp asked if they could proceed with the contracts as submitted or they would need to wait for the Conflict of Interest policy to be submitted. Commissioner Peyton advised him they could proceed with the contracts. Chair Sealock requested a roll call vote. The motion passed unanimously. (See Order No. 98-31)

Chair Sealock called on IWRA/Harveys Casino Hotel, the license holders for Harveys Kanesville Queen. Verne Welch, General Manager, introduced Dan Roy, VP of Casino Operations; Art Hill, Controller; Ron Alling, legal counsel from Nevada; and Mr. Payne.

Mr. Welch stated that Harveys had over 2.7 million guests at their facility during 1997, the hotel had an occupancy rate of 86%, and over 1.2 million meals were served in the

buffet and restaurants. They current employ 1,061 employees – 55% from Iowa. He noted Harveys has paid $25.2 million in taxes, with $3.1 million going to the Council Bluffs area. Harveys made approximately $180,000 of in-kind contributions beyond the distributions made by IWRA. Mr. Welch had a brochure distributed showing the organizations which received funding from Harveys. He noted that Harveys made capital improvements of $5.3 million. Mr. Welch advised the Commission that Harveys was asking for approval to add three additional table games in the area being reconfigured.

Commissioner White stated that he felt this license renewal should be subject to the same conditions placed on Ameristar.

Hearing no further comments or questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve the application of IWRA/Harveys Casino Hotel to operate the Kanesville Queen, including the request for authorization to add three table games on the third level, subject to the adoption of a Conflict of Interest policy and same being submitted to the Commission. Commissioner Hansen seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-32)

Mr. Alling provided the Commission with a brief update concerning the potential merger between Colony Capital Corporation and Harveys Casinos Resorts. He commended the Commission staff on their cooperative nature and ability to analyze a complicated situation. He indicated he would be filing a copy of the proxy statement after receiving comments from the SEC. Mr. Alling stated that Harveys is contemplating merging into a subsidiary of Colony Capital, but Harveys would be the surviving entity with Colony's capital structure. He stated there would be no effect on the Council Bluffs facility. Mr. Ketterer asked Mr. Alling to provide a timeline as to when the merger would become effective. Mr. Alling stated that a shareholders meeting has been scheduled for May 14, and proxies should be out to the shareholders by April 1.

Chair Sealock called on Bluffs Run Casino (BRC) to present their contracts for Commission approval. Doug Okuniewicz, Operations Manager, presented the following contracts:

- Acceptance Insurance Company – Workers Compensation & Employers Liability Insurance
- Fidelity & Deposit of Maryland – Crime Insurance Package
- HAJA, Inc. – Rent on Print Shop Facility

Commissioner White stated that it seemed the Commission dealt with related party contracts every month from either Andersen Construction Company or John Nelson. Commissioner White asked about the process used in awarding the workers compensation insurance and employers liability insurance to Acceptance Insurance Company. Mr. Okuniewicz advised him that all other companies declined to submit a bid for the insurance. Commissioner White noted that Ameristar and Harveys had found insurance companies that were not with a related party, and at a much lower rate. The

premium quoted to BRC for one year was $359,176. Mr. Okuniewicz indicated the premium was much higher because of the number of incidents/accidents that have occurred at BRC in the past. Commissioner White stated that he had a problem with the contract because it was with an insurance company operated by Mr. Nelson who sits on the board of IWRA. Mr. Okuniewicz again went through the process AIM utilized in selecting an insurance company. He noted that the premium is not just based on the number of employees involved, but also the number of incidents/accidents that have previously occurred. Commissioner White asked how he as a Commissioner was to know that this particular contract was a bona fide, valid arrangement when other tracks and riverboats have obtained similar insurance for a much lower rate. He asked for copies of documentation from the brokerage firm in Alabama that would show the various companies contacted for a RFP, and their response.

Commissioner Hansen stated that workers comp insurance is the least desired form of business for an insurance company. It is usually sold only on an accommodation basis if the insurance company is supplying the business with other forms of insurance. Additionally, workers comp insurance provisions are statutorily set by the Legislature. Iowa's workers comp program is one of the most liberal programs. His third point was that the random sampling either in the room or outside of the room was not significant unless the actuarial studies on the loss experience of a given risk were studied. There is a base rate that varies based on the different types of activities performed by various employees. This would allow for a wide disparity in rate between BRC and Ameristar. No correlation can be made without reviewing the actuarial experiences of the two entities.

Commissioner White stated that he agreed with Commissioner Hansen's comments, but that the Commission has a special obligation to investigate related party transactions. He indicated he was concerned about side arrangements that would benefit Mr. Nelson. Mr. Okuniewicz stated that he doubted Mr. Nelson even knew about this contract. Commissioner White reiterated his comment that he felt the Commission had an obligation to investigate related party contracts.

Commissioner White moved to defer action on the contract with Acceptance Insurance Company until the April meeting. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-33)

Commissioner Peyton moved to approve the contract with Fidelity and Deposit of Maryland. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-34)

Commissioner White, noting the contract with HAJA was a related party contract, asked if there was a written lease for the print shop or an appraisal on file showing the fair market value of the property. Mr. Okuniewicz indicated in the negative.

Commissioner White moved to postpone action on the contract with HAJA, Inc. until the April meeting to give BRC time to get a written lease and obtain a certified appraisal and submit it to the Commission for review. Commissioner Peyton seconded the motion, but stated he did not feel the Commission needed a certified appraisal. He indicated that he would like to see documentation showing the square footage of the facility and how it compares with neighboring properties. He did not feel a certified appraisal would be useful in determining a fair rent. Commissioner White stood by his request for a certified appraisal.

Commissioner Peyton moved to amend the motion by striking the words "certified appraisal" and inserting "justification to the Commission's satisfaction". Commissioner Hansen seconded the motion. Commissioner Peyton stated that he is looking for some justification that the rent is not exorbitant.

Chair Sealock called for the vote on the amendment to the motion. The motion carried unanimously. (See Order No. 98-35)

Chair Sealock then called for the vote on Commissioner White's motion as amended. The motion carried unanimously. (See Order No. 98-36)

Chair Sealock called on Racing Association of Central Iowa/Prairie Meadows Racetrack & Casino (RACI/PMR&C) with regard to their agenda items. The first agenda item was a request for the approval of the racing officials and department heads for the 1998 Thoroughbred Meet. Tom Timmons, Vice President of Operations, noted that eight or nine names had been submitted and approved at the January Commission meeting and the last four names were being submitted for approval at this time.

Commissioner Peyton moved to approve the Racing Officials and Department Heads for the 1998 Thoroughbred Meet. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-37)

Chair Sealock moved on to the next agenda item for PMR&C – Request for approval of a contract with Leo Daly, Architect, for New Offices, Theater, Show Lounge, Casino and Sports Book, which had been tabled at the January 15 Commission meeting. Chair Sealock noted there was some confusion as to what action was tabled. Commissioner White stated the agenda item was tabled to allow PMR&C time to visit with Polk County officials about using some of the rent money to pay for the improvements being requested. The other option presented was to consider scaling back the project so that it could be paid for by using the revenues generated from the 50 additional slot machines. Mr. Timmons stated that discussions had been held with Polk County, but they advised PMR&C that this was not feasible at this time. He noted that the revenues from those machines were being used to pay for the improvements already approved by the Commission.

Gary Palmer, Vice President of RACI, advised the Commission that the discussions with Polk County had been positive. However, because of budget constraints, Polk County

did not feel they could not forego a portion of the rent payments to fund the needed improvements.

Commissioner Peyton stated that it is not fair to ask the County to forego rent that has been agreed to and budgeted. Under the present situation, RACI would be making substantial improvements to a property owned by someone else, that is actively being marketed for sale. One way to remedy the situation is to get a credit from the County for the depreciated value in the future should RACI decide to buy the facility, and the County decides to sell it. Under this scenario, RACI would have some assurances that if they make improvements to the facility that can not be amortized over the length of the lease, they would be able to get credit for the improvements toward the purchase price if they have the opportunity to purchase the facility.

Mr. Palmer indicated this is a very complex situation in which RACI is doing their best to make everyone happy.

Commissioner Peyton noted that he had reviewed RACI's financial projections, and using those estimations, there would be sufficient revenues over a 5-year period to finance all of the requested improvements except for the casino improvements with no impact on the County. It would affect the $12 million reserve.

Commissioner Hansen stated that he would like RACI to explore the possibility of some kind of relief for the investment in the event the facility is sold. The agreement would establish a set period of time in which the improvements would be amortized, but should the facility be sold in one to five years, the County would reimburse RACI for a specific amount. He suggested this issue could be taken up at another meeting. He noted some of the improvements would enhance the sale price, therefore; there should be some sharing between RACI and the County as to the amortization.

Commissioner Peyton asked if RACI was content to let the issue lie for now. Mr. Palmer stated RACI was not prepared to go forward at this time. Commissioner Peyton referred to Iowa Administrative Rules 491-4.2(8)1 and 3: The Commission may deny approval of any contract which, in its sole opinion, represents the distribution of profits that differs from commission-approved ownership and beneficial interest. This situation involves the distribution of profits for capital improvements. There is another rule which states that the commission shall review contracts in order to assure the public interest that gaming-related funds are directed to lawful recipients. This would not be a problem as Polk County is a lawful recipient, except there is an agreement between RACI and the County restricting that distribution. A problem would occur should RACI exceed the agreed upon amount.

Mr. Farinella stated that RACI would like to see the motion to deny cleared from the table in some form. He noted that from the discussions today, it is clear the Commission would like them to formulate another mixture on the proposal and come back with that at a later date.

Commissioner White moved to postpone this issue indefinitely. He agreed with Commissioner Hansen's suggestions to look at some different angles.
There was a brief discussion as to what had actually been tabled. It was determined that the agenda item, not a motion, had been tabled. That action would require the item to be brought up at this meeting because it was tabled to a time certain. No action is being requested at this time, therefore, this item is cleared from the agenda. Commissioner White stated that the Commission stands on the defeat of the substituted motion, which denied the additional slot machines. Commissioner Hansen clarified that the agenda item has been cleared from the table, but RACI has been informally requested to pursue other options.

Chair Sealock moved to RACI's request for approval of Lease of Facilities Known as Prairie Meadows Racetrack & Casino. Commissioner Peyton asked if there was a signed Lease. Mr. Timmons indicated the original Lease was signed in October. There are two amendments before the Commission for approval today. The first amendment states the Lease shall be terminated upon the sale of the facilities with RACI having 15 days to match any purchase offer after all conditions precedent of such offer have been satisfied or removed. The second amendment makes the changes to the original Lease as requested by the Commission when they approved the Lease in October.

Liza Ovrom, Polk County Attorney, advised the Commission that the IRS has approved the Closing Agreement. The original date was scheduled for February 15, but the County obtained a 30-day extension to March 15. Commissioner Peyton asked Ms. Ovrom if it was her understanding that the Lease was not really in effect until such time as the Closing Agreement had been completed. Ms. Ovrom stated that technically the Lease would not be in effect until the Closing Agreement was completed and the amendments approved. She noted the Polk County Board of Supervisors held a public hearing in December to approve the Lease with the first amendment, and the second amendment was approved on December 23, 1997.

Commissioner Peyton asked Ms. Ovrom what agreement Polk County and RACI are operating under until the Lease becomes effective on March 15. Ms. Ovrom advised that RACI and Polk County have been operating under the terms of the Lease. Commissioner Peyton noted that Paragraph 41 of the Lease states that it is not effective until the closing agreement has been successfully completed. Ms. Ovrom stated that the closing agreement is ready to be sent to the IRS upon Commission approval. Commissioner Peyton clarified that there would be no reliance on the old Operating Agreement or any of its provisions. Ms. Ovrom indicated that would be correct if the Commission approved the Lease with the amendments. Commissioner Peyton asked what would occur if the Commission approved the Lease with one amendment. Ms. Ovrom stated that she did not feel there would be a valid Lease between Polk County and RACI as the County's approval is with the first amendment.

Commissioner Peyton advised Ms. Ovrom that the Commission approved the Lease in October subject to three changes. Polk County signed that Lease. The second amendment before the Commission addresses those three items. Commissioner Peyton

stated he did not see a need to approve the Second Amendment because those changes were a condition of the Lease being approved in October 1997 and were requested by the Commission.

Commissioner White asked Ms. Ovrom to explain the purpose of the First Amendment to the Lease. Ms. Ovrom explained that if a new buyer was found and obtained a gaming license, which is required by law, RACI has agreed that the Lease would terminate upon such sale and licensing of the new entity by IRGC. Commissioner White's interpretation of the amendment is that it throws RACI off the premises. Commissioner White noted that the first amendment refers only to "gaming", not "racing". He feels Polk County would use this amendment to convince the Legislature to establish a land-based casino without horse racing. Ms. Ovrom indicated that she was not making that distinction, but concurred that the Lease only refers to "gaming".

Commissioner Peyton noted that the Legislature would decide whether or not to allow land-based casinos, not the Commission. Commissioner Peyton stated it was not the Commission's intention to prohibit Polk County from selling the property. In his interpretation of the Lease, there are no restrictions placed on Polk County against selling the property in the revised Lease. Ms. Ovrom agreed with the statement. Commissioner Peyton stated that he does not feel the first amendment adds anything to the Lease; it is a negotiated provision that was not part of the approved Lease, which was a condition of PMR&C's license. In his opinion this amendment is similar to a provision under the old Operating Agreement that gave the Landlord (Polk County) the right to expel the Tenant (RACI) whenever they could find a better tenant.

Commissioner White stated that he thought the whole point of the situation was to turn the Operating Agreement into a five-year Lease to give RACI some peaceful possession in order to continue running their business.

Mr. Farinella advised that RACI's Board used the following criteria in reviewing this amendment: 1) State law would have to be changed; 2) IRGC would have to approve the new license; and 3) RACI would have 15 days to exercise its right to buy the facility based upon the first two criteria occurring. The Board did not feel it was placing RACI in any jeopardy. They felt that if the law and State said the new arrangement was OK, they did not want to be the ones preventing the sale from going through.

Commissioner Peyton indicated the scenario would be the same without the first amendment. Should the Legislature determine there should be another qualified lessee that should be allowed to apply to the Commission, it would be the same as if there was no first amendment. Mr. Farinella stated that the RACI Board understood that, but this amendment was a specific request from the County, which RACI's Board has agreed to.

Commissioner Peyton noted that if there are potential buyers for the property that is one issue. However, if there is already a licensee in the facility who already owns the property, he feels the potential licensee will pay more than the value of the property in order to get the existing licensee out of the facility. This scenario sets up a situation in

which the license is brokered along with the property, a scenario to which he is adamantly opposed. It is his contention that as long as the Lease allows Polk County to exercise their free will to sell the property, and the Lease terminates upon RACI's loss of their license, then Polk County has the right to do whatever they wish with the property under the law. He does not feel there is a need to set up a situation which the Commission would have to deal with in the future that involves brokering or selling the license, which is expressly prohibited by law.

Mr. Palmer stated that both parties felt trust had to enter into the project. He reiterated Mr. Farinella's statement that the RACI Board is comfortable with this amendment for the very reason that the law would have to be changed and the Commission would have to grant a license.

Commissioner Peyton stated that RACI could submit the First Amendment separately if they so desired. He noted that the Commission approved the Lease, RACI's license was conditioned upon the Lease being adopted subject to the amendments requested, which has been done, and he does not feel the Commission's approval of the second amendment is required. He stated that he is not inclined to accept the First Amendment.

Mr. Timmons, noting that Tom Flynn, RACI's legal counsel was not in attendance, asked for Ms. Ovrom's advice. Commissioner White asked if Mr. Flynn had been a party to the discussions. Mr. Timmons indicated that he had, but had a prior commitment. Commissioner Peyton, referring to the minutes from the January Commission meeting, noted that Mr. Flynn had been asked about the Lease at that time. Mr. Flynn indicated that it was his understanding that the Lease was approved with the three changes. Commissioner Peyton stated that he felt that was a correct statement. Those changes to the Lease were a condition to RACI's license being renewed.

Hearing no further discussion, Chair Sealock called for a motion. No motion was made at this time. Ms. Ovrom and Mr. Timmons asked where this situation was in being resolved. Mr. Timmons indicated that RACI had been confused by the Commission's actions at the January meeting. Commissioner White advised Mr. Timmons that the Commission felt there was a Lease arrangement that was signed by both parties. The Commission approved the Lease with the changes requested by Commissioner Peyton. No further action on the part of the Commission regarding the Lease was required. The Commission was later advised that the County had not given public notice of the Lease as required by law. A public hearing was held in December at which time the County decided to make another change to the Lease. He stated that the Commission could not be held accountable for the County's decision in December to make a change to the Lease. Mr. Timmons noted that RACI's Board had approved the change in the Lease. Commissioner White advised him that RACI did not have the authority to agree to any changes to the approved Lease that were beyond the Second Amendment.

Ms. Ovrom noted that the Commission was scheduled to vote on the amended Lease, which included the First Amendment, at the January meeting. Following the vote on the additional slot machines and construction projects, Mr. Flynn withdrew the agenda item.

She stated there was a motion on the floor at that time, and that is what RACI and Polk County felt was being voted on today.

Commissioner White moved to deny the First Amendment to the Lease. Commissioner Peyton seconded the motion.

Ms. Ovrom asked if the parties would go back to operating under the old Operating Agreement. Commissioner White stated they had an approved Lease. Commissioner Peyton stated the parties could do whatever they wished, but RACI's license was conditioned upon the adoption of the Amended Lease as approved by the Commission at the October Commission meeting. Ms. Ovrom noted that the Amended Lease, contains those amendments, and she does not feel the one provision requested by the Polk County Board of Supervisors should cause the Commission any concern. The Commission would have the last word regarding any new licensee. She stated that she had not spoken with the Supervisors, but she feels the County will not consider the Lease to be valid without the amendment.

Commissioner White called for the vote without further discussion. Steve Roberts, acting legal counsel, asked about the status of the Lease with the three changes requested by the Commission. He noted that the Polk County Board of Supervisors approved one Lease at the Public Hearing, but the Commission has approved something different. He wondered if they had a valid Lease with the three changes. Commissioner Peyton stated that if the County feels they approved something other than that approved by the Commission, they would have to reconsider the Lease at some type of public hearing. If they don't, the issue could arise as to whether the conditions for the license have been satisfied. There was additional discussion surrounding the requirements of the Public Hearing. Commissioner White stated the Commission approved the Lease in October, conditioned upon three changes being made. Those conditions are satisfied with the Second Amendment. He noted that as far as the Commission is concerned, RACI has a Lease that complies with the Commission's ruling regarding the license. If Polk County takes the position that the Lease is not valid, then there is a problem.

Chair Sealock called for a roll call vote on the motion to deny the First Amendment to the Lease between Polk County and RACI. Commissioner Hansen passed on his vote. The remaining vote was 3-1 in favor. At that time, Commissioner Hansen changed his vote from "Pass" to "Aye." The final vote was 4-1, Chair Sealock voting No. (See Order No. 98-38)

Mr. Roberts clarified that if Polk County believes, either procedurally or for some other reason, that the Lease is not valid that it is their responsibility to come back to the Commission to indicate that is their position. Commissioner White stated that the Commission would not take any adverse action against RACI based on the language contained in the First Amendment. It is the Commission's position that the Lease in effect is the Lease approved in October with the Second Amendment. Ms. Ovrom stated that she would need to talk with the Board of Supervisors' to determine what their position would be concerning the validity of the Lease based on the Commission's action.

Chair Sealock moved to the contracts submitted by RACI for contract approval. The following contracts were submitted:

- Capital Sanitary Supply – Housekeeping Supplies
- Des Moines Metro Transit Authority – Advertising on Illustrated Buses, Shelters, Headlights and Kings
- First Choice Distribution – Housekeeping Supplies
- Iowa Harness Horsemen's Association – Funds to help IHHA increase the Quality of Horses at State and County Fairs (Promote Horse Breeding Industry)
- Love Scott & Associates – Outdoor Billboards
- Automatic Data Processing – Out Source Bureau for Payroll System
- Hallet Materials – Materials, Sand and Silt for Race Track Maintenance
- Krogman & Associates – Advertising at Veteran's Memorial Auditorium on Message Center Equipment
- Learfield Communications – Iowa Hawkeye Network Advertising
- Breeders Cup Limited – National Stakes Purse for Horses Qualifying for Breeders Cup during Cornhusker Handicap Race

Commissioner White, noting that the contract with Hallet Materials was a related party contract, asked who owned the company. Mr. Timmons stated that Jim Rasmussen, Chairman of the RACI Board, owned the company. He noted that in order to insure the safety of the horses when racing, the make-up of the track surface requires a specific mixture of sand, clay and silt. After taking samples from several pits in central Iowa, the engineering firm submitted a recommendation as to which pit could provide the materials best suited for the track. Commissioner White asked if this would be an ongoing arrangement. Mr. Timmons indicated that it was a one-time scenario in order to insure the safety of the track for the upcoming season.

Commissioner Hansen left the meeting at 2:40 PM.

Commissioner Peyton moved to approve the contracts as submitted by RACI. Commissioner Allen seconded the motion. Hearing no further discussion, Chair Sealock called for the vote. The motion carried on a 4-0 vote. (See Order No. 98-39)

Chair Sealock noted that prior to leaving the meeting, Commissioner Hansen had expressed his desire to make a motion in his absence. Mr. Farrell noted that the record should show, due to previous confusion surrounding when Motions to Reconsider could be made, that Commissioner Hansen has indicated via a written document that he intends to make a Motion to Reconsider. Chair Sealock read Commissioner Hansen's request for the record: "Madam Chair, I will move to reconsider the motion to reject the Lease between RACI and Polk County. Signed William Hansen"

At this time, Chair Sealock called on Mr. Ketterer regarding the rules under Notice of Intended Action. The rules listed under Notice of Intended Action were:

- Rescind subrule 5.16(9) and insert new subrule – First-aid room

- Amend subrule 13.2(1)
- Amend subrule 13.5(2) – Knowledge of rules
- Rescind subrule 13.5(3) and insert new subrule – Occupational license
- Amend subrule 13.6(1)
- Amend rule 491-13.10 (99D,99F) by adding new subrule 13.10(24)
- Amend subrule 13.14(5)
- Amend subrule 21.13(3) – Efficient, safe and enjoyable for patrons
- Amend subrule 24.12(1), paragraph "b", subparagraph (2)
- Amend subrule 491-24.11(99F) by adding new subrule 24-11(4)
- Amend 491 – Chapter 24 by renumbering 491-24.16(99F) as 491-24.12(99F), and then renumbering existing 491-24.12 (99F) through 491-24.15(99F) as 491-24.13(99F) through 491-24.16(99F)
- Rescind and reserve rule 491-24.17(99F)
- Amend rule 491-24.18(99F) by adding new subrule 24.18(3)
- Amend Chapter 25 by adding new rule and renumbering existing 491-25.15(99F) through 491-25.21(99F) ass 491-25.16(99F) through 491-25.22 – Firearms – possession within casino
- Rescind subrule 25-19(4) and insert new subrule – 24.19(4) – First-aid room

He noted that the Commission had been provided with a short synopsis regarding these rule changes. He noted that these rule changes are not substantive, mainly housekeeping changes. Mr. Ketterer noted that Commissioner White had suggested that on Item 5, Amend subrule 13.6(1) that the last sentence should read: "If more than five years" rather than "If not within the past five years". Mr. Ketterer recommended approval of the rules under Notice of Intended Action with Commissioner White's requested change.

Hearing no discussion, Chair Sealock called for a motion. Commissioner Peyton moved to approve the rules under Notice of Intended Action. Commissioner Allen seconded the motion. The motion carried unanimously. (See Order No. 98-40)

Mr. Ketterer then addressed the following rules, which were on the agenda for final adoption:

- Amend Chapter 1 – Commission approval of contracts and business arrangements, retention, storage and destruction of books, records and documents
- Rescind rules 491-4.30(99D,99F) through 4.34(99D,99F), and reserve
- Amend subrule 7.9(4), paragraph "a"
- Amend subrule 10.2(6), paragraph "a", subparagraph (1) – General
- Amend subrule 12.10(1) – Duties of commission representative
- Amend rule 491-13.1 by adding a definition for "Board"
- Amend subrule 13.6(5)
- Amend subrule 13.6(7)
- Amend Chapter 13 by adding new rules, renumbering existing 491-13.11(99D,99F) through 491-13.22(99D,99F) to 491-13.14(99D,99F) through 491-13.25(99D) – Alcohol and drug testing rule, Failure to pay child support, Labor organization registration required

- Amend subrule 22.18(1) – Record storage retention
- Amend Chapter 26 by adding newsubrule – Wide Area Progressive Systems

Mr. Ketterer recommended approval of Items B 2-11, and withheld Item 1 for further discussion. He noted that with regard to Item 1 – Commission approval of contracts and business arrangements, retention, storage and destruction of books, records and documents, Mr. Terp, on behalf of the Iowa Gaming Association, had submitted a request to raise the threshold level regarding contract approvals from $50,000 to $250,000.

Hearing no further discussion regarding the rules under final adoption, Chair Sealock called for a motion. Commissioner Peyton moved to approve agenda items B2 through 11. Commissioner White seconded the motion. The motion carried unanimously. (See Order No. 98-41)

Mr. Ketterer then addressed proposed agenda item 3B(1), which moved the contract rule to Chapter 1. Chair Sealock asked Mr. Terp if he wished to speak regarding this agenda item. Mr. Terp indicated that he would be happy to answer any questions regarding their intent. He noted that he had addressed the Commission regarding this issue when the change was originally requested. Chair Sealock asked if the threshold had been changed between the original presentation and the letter. Mr. Terp noted that the original comments had been made when this particular rule was Noticed approximately three or four months ago. At that time, the threshold level mentioned was $200,000; however, following discussions with staff, it was determined that $250,000 might be more appropriate.

Commissioner Allen stated that she was sympathetic to a degree, but felt the proposed ceiling would eliminate the scrutiny of over 90% of the contracts, and would seriously impair the ability of the Commission to maintain its checks and balances. She stated that she could not support the request.

Mr. Terp stated that he believed the intent of the Legislation was to maintain the integrity of gaming, as well as the related party relationships, that the companies are operating in an appropriate manner, and using Iowa products and services whenever possible. The industry associations in Iowa do not feel the $250,000 threshold would change that intent. IRGC would still have a gaming representative at each facility that would be reviewing the contracts on an annual basis. The licensees are also submitting their quarterly reports outlining all of the contracts, regardless of amount, to show the use of Iowa vendors. He stated that he felt the Legislature was intending to make sure that substantial contracts for gaming machines, etc. were approved. He noted the industry associations would be willing to discuss a lower threshold level.

Commissioner White stated that he found the $50,000 threshold to be very helpful. In light of all the automation and computer equipment available, he does not feel the current threshold could be too much of a burden to the licensees. The contracts provide him with a broader view of the licensees' business.

Hearing no further discussion, Chair Sealock called for a motion. Commissioner White clarified that if the motion was to approve the rule, they would be approving the rule in its current form without the increased threshold and moving it to Chapter 1. Mr. Ketterer stated that was a correct.

Commissioner Peyton moved to approve Proposed Agenda Item 3B(1). Commissioner White seconded the motion. Hearing no further discussion, Chair Sealock called for the vote. The motion carried unanimously. (See Order No. 98-42)

Chair Sealock moved to the approval of the distribution of the Horse Racing Promotion Fund. Linda Vanderloo, IRGC staff, recommended distribution of the funds in the manner in which they were generated. Following that guideline, the Iowa Thoroughbred Association would receive $4,962.43; the Harness Association would receive $148.79 and the Quarter Horse Association would receive $484.06, for a total of $5,595.28. Mr. Ketterer confirmed that all parties had submitted an accounting of how previously received funds had been used.

Hearing no further discussion, Chair Sealock called for a motion. Commissioner Allen moved to approve the distribution of the Horse Racing Promotion Fund. Commissioner Peyton seconded the motion. The motion carried unanimously. (See Order No. 98-43)

Chair Sealock moved to the approval of the Escrow Committee Members for Greyhound Racing in Iowa. Ms. Vanderloo advised the Commission that the following individuals had been selected by various entities to serve on this committee: Piers Banks – Bluffs Run Casino; Bruce Wentworth – DGP&C; Nancy Whittenburg – IRGC; and David Ungs and Bob Hardison – IGA. Ms. Vanderloo indicated that Mr. Banks had stepped into a leadership role and is in the process of establishing a mutually acceptable meeting date. She noted that the meeting would be held in the conference room at IRGC's Des Moines office.

Hearing no further discussions, Chair Sealock called for a motion. Commissioner Allen moved to approve the greyhound escrow committee members as submitted. Commissioner Peyton seconded the motion. The motion carried unanimously. (See Order No. 98-44)

Chair Sealock asked Mr. Ketterer to address the hearings with regard to violations of Iowa Code Section 99F.9 – Wagering – Age Restrictions. Mr. Ketterer noted that the first hearing dealt with a violation by IWRA who operates BRC. Mr. Ketterer noted that the Commission has a signed copy of the Stipulation between IRGC staff and IWRA. The violation occurred on December 15, 1997, when a minor entered the casino while the security officer on duty was preoccupied with another customer. The individual purchased a keno ticket approximately one hour later, and then proceeded to the second floor of the casino where he played a slot machine for one hour and forty-five minutes. At approximately 10:00 PM, the individual attempted to purchase alcohol and was refused service by the bartender who called security. Mr. Ketterer noted this is the first underage violation since BRC implemented Project 21 and other procedures to screen

minors attempting to enter the casino. The Stipulation calls for an administrative penalty of $10,000. Mr. Ketterer recommended Commission approval of the Stipulation.

Hearing no further discussion, Chair Sealock called for a motion. Commissioner White moved to approve the Stipulation between IRGC and IWRA. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-45)

Mr. Ketterer moved to the next item under this agenda item, which is for a similar situation that occurred at PMR&C. In this situation, an underage individual entered the casino on December 30, 1997, and was not asked for identification. While in the casino, the individual played several slot machines, hitting a jackpot at 1:42 AM. A change seller noticed the individual changing places with another individual prior to the jackpot being paid and notified security. The individual was unable to produce identification when asked to do so. Mr. Ketterer noted that PMR&C had been in operation for almost three years with almost no instances of underage gambling occurring. Mr. Ketterer noted that one of the issues looked at in reviewing these situations is that all employees of the facility are responsible for watching for underage individuals, it is not just the responsibility of the security guards. He noted that in both instances, the individuals had gambled in more than one location in the facility, but credited employees of the licensees with discovering and reporting the underage individuals. The Stipulation between PMR&C and IRGC calls for a $10,000 administrative penalty. Mr. Ketterer recommended Commission approval.

Hearing no discussion concerning the Stipulation, Chair Sealock called for a motion. Commissioner Peyton moved to approve the Stipulation between PMR&C and IRGC. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-46)

Mr. Ketterer proposed establishing guidelines to be used in determining fines in underage gambling violations, which would create expectations of fairness, consistency and predictability on the part of the licensees. Mr. Ketterer proposed the following guidelines:

- If an underage person is in the casino on the floor for at least 30 minutes *and* has either played a slot machine, played a table game, or been served alcohol (thus contact with at least 2 employees), the following penalty schedule will be imposed.

- <u>1.5M Admission Threshold</u>
  [Prairie Meadows, Council Bluffs, and Quad Cities facilities are above]
  [Dubuque, Marquette, Clinton, Burlington/Ft. Madison, Sioux City are below]

- <u>≥1.5M</u>
  1st two violations - $10,000 each
  Next 2 violations - $15,000 each
  5th & 6th violations - $20,000 each

  <u>≤1.5M</u>
  1st violation - $10,000
  2nd violation - $15,000
  3rd violation - $20,000

Additional violations occurring within a one-year period would go before the Commission. Violations would not count against the total after the one-year anniversary date of the first violation (as in driving violations). He noted the Commission would reserve the right to take additional action depending upon the situation.

A discussion followed as to whether it would be better to adopt the proposed guidelines via the rule making process or simply use them as guidelines in establishing penalties in underage gambling violations. Mr. Ketterer advised that the only reason he was bringing them before the Commission now was that he felt it was important the licensees felt they were being treated fairly and consistently in these situations. Commissioner White noted that he has not heard any complaints regarding previous Stipulations.

Commissioner Peyton asked if the Commission had a statutory restriction on the amount of a fine that could be imposed. Mr. Ketterer advised the restriction is on the racing side, not the riverboat. If a stipulated agreement can not be reached for an infraction on the racing side, the Commission has the ability to issue a $1,000 fine or suspend the license. Mr. Farrell noted that most licensees would rather pay a higher fine than have their license suspended.

Commissioner Allen asked Mr. Ketterer what the highest number of violations at a facility was for a 12-month period. Mr. Ketterer advised there was a situation that occurred over a two-month period at BRC, which resulted in an administrative penalty of $40,000, as well as instituting a number of procedures and Project 21. As a rule, there have only been one or two violations at any facility.

Chair Sealock moved to Administrative Business. Gary L. Baish, a greyhound trainer, filed a Petition for Appeal following an Administrative Law Judge's (ALJ) decision to uphold the steward's fine resulting from a positive flunixin test. Mr. Baish noted that it is widely known that flunixin is a residual drug found in the meat used to feed greyhounds, and the trainers have no way of knowing if the meat contains flunixin. He stated that, in his opinion, the amounts showing up in the drug tests are not sufficient to affect the greyhound's performance. He pointed out that testing procedures have progressed to the point of being able to determine the presence of drugs at parts per billion. He feels this is an issue that needs to be resolved as it could hurt the greyhound industry. He asked the Commission to reconsider his fine.

Following Mr. Baish's comments, Chair Sealock called on Mr. Farrell for his comments. Mr. Farrell stated that this case is an illustration of the issue brought before the Commission by Mr. Crawford at the beginning of the meeting. He noted the Commission has a rule in place, which prohibits foreign substances in the greyhound and holds the trainer accountable. Mr. Farrell advised that the Commission decided a similar issue about two years ago in a case involving Ron Mullen by affirming the ALJ's decision. Mr. Farrell indicated that he was not sure how the Commission wanted to proceed in light of the discussion held earlier in the meeting. He noted the issue is based on present law, which does not allow a lot of leeway. In his opinion, the Commission would have to affirm the ALJ's decision.

Commissioner White asked if other hearings regarding positive flunixin test results were being deferred or continued. Mr. Farrell noted that Mr. Crawford has requested continuances in two of the cases to allow for more testing, etc., and will ask for additional continuances based on the earlier discussion. He noted that Mr. Baish has not requested a continuance. Commissioner White asked Mr. Farrell if he intended to contest the requests for continuances. Mr. Farrell stated that he did not, but some type of time frame should be established. Mr. Baish requested a continuance in this issue. Mr. Farrell stated he was not opposed to Mr. Baish's request to continue this matter.

Commissioner White moved to grant Mr. Baish's request for a continuance, pending Mr. Ketterer bringing recommendations to the Commission for a solution to the flunixin problem. Commissioner Peyton seconded the motion. Mr. Farrell stated that his understanding of the motion was that the issue would be raised again after recommendations for ways to resolve the issue have been presented to the Commission.

Hearing no further discussion, Chair Sealock called for the vote. The motion carried unanimously. (See Order No. 98-47)

As there was no Public Comment, Chair Sealock called for a motion to adjourn. Commissioner Peyton so moved. Commissioner Allen seconded the motion, which carried unanimously. The meeting adjourned at 3:20 PM.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
APRIL 17, 1998

The Iowa Racing and Gaming Commission (IRGC) met on Friday, April 17, 1998 in Meeting Room C at the Best Western Pzazz Motor Inn, 3003 Winegard Drive, Burlington, Iowa. Commission members present were Rita Sealock, Chair; Brad Peyton, Vice Chair; and Bill Hansen, Jackie Allen and Harold White.

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

Jim Rheinschmidt, President of Southeast Iowa Regional Riverboat Commission, and The Honorable Tim Scott, Mayor of Burlington, welcomed IRGC to Burlington. Mr. Rheinschmidt introduced SIRRC members, and Dick Canella, former IRGC member and chairperson, and Gene Enke, former SIRRC member and chairperson.

Chair Sealock noted that Commissioner Allen had been reappointed for another three-year term.

Chair Sealock called for a motion to approve the minutes. Commissioner Hansen moved to approve the minutes as submitted. Commissioner Peyton seconded the motion, which carried unanimously.

Chair Sealock moved to the next agenda item, Unfinished Business – Motion to Reconsider Vote to Deny First Amendment to Lease between Racing Association of Central Iowa (RACI) and Polk County. Commissioner Hansen noted that RACI's legal counsel was unable to attend the March Commission meeting. He requested that he be allowed to make a few comments regarding the proposed First Amendment to the Lease between the parties. The debate on the proposed First Amendment centered around the fact that if Polk County sold the facilities; RACI would have 15 days in which to respond to the offer.

Tom Flynn, legal counsel for RACI, expressed his concern with the action taken due to the dilemma it left RACI in with regard to the Lease. He is concerned that if the Commission does not approve the Lease, the parties will return to the Operating Agreement. Mr. Flynn stated that RACI does not feel the proposed amendment is detrimental to RACI or Prairie Meadows Racetrack & Casino (PMR&C). He stated his belief that approval of the Lease with the two amendments, or disapproval, fell under the Commission's authority to approve contracts. He noted that the proposed amendment would require legislative action to change the law, Commission approval of the new licensee, and allow RACI an opportunity to match any offer. Mr. Flynn stated that RACI should have the ability to enter into any contract as long as it does not violate any laws.

Commissioner Peyton stated that he did not feel the Lease fell under the Commission's authority to approve contracts. He noted that it was part of the Order entered into by all parties concerned to resolve the Contested Case hearing. The Order contained specific terms for the Lease, which RACI and Polk County are attempting to change. The Commission requested that very specific changes be made to the Lease, when they approved. The renewal of RACI's license was conditioned upon RACI and Polk County entering into a signed Lease. Commissioner Peyton stated that he objected to having a contract changed after all parties had reached an agreement as to the terms of the agreement. He stated that he felt the Lease was in effect between RACI and Polk County. Commissioner Peyton asked Mr. Flynn if he disagreed with that statement.

Mr. Flynn stated that one of the parties to the Lease has indicated that without the First Amendment to the Lease, there is no Lease. Commissioner Peyton asked Mr. Flynn if the County was accepting their payments under the Lease. Mr. Flynn indicated they were accepting the payments conditionally with the right to challenge the validity of the Lease. Mr. Flynn stated that if the Commission and RACI take the position that the Lease is valid, and Polk County takes the position that it is not, then a court would have to decide the issue. He indicated that he did not feel the issue was significant enough to warrant a court hearing. Commissioner Peyton disagreed, stating that it would bring closure to this particular issue, which has continued for a number of years. Mr. Flynn countered that he felt the best way to bring closure was for the Commission to approve the First Amendment.

Commissioner Allen referred to Iowa Code Section 99D.9, which states that a license is not transferable or assignable. Under the proposed amendment, she feels the Commission would be breaking the law if they approved it. She noted that Iowa Code Section 99D.9 also states that: "A license shall only be granted to a nonprofit corporation or association upon the express condition that: a) The nonprofit corporation or association shall not, by a lease, contract, understanding, or arrangement of any kind, grant, assign, or turn over to a person the operation of a race meeting licensed under this section..." She wondered who would be the nonprofit licensee if RACI did indeed purchase the facility.

Mr. Flynn stated that Commissioner Allen's thought process was exactly the same process that RACI went through when the County approached them with the amendment. Mr. Flynn advised the Commission that, in RACI's estimation, the following would have to occur before the amendment would have any effect: 1) Polk County would have to receive an acceptable offer for the facility, 2) the Legislature would have to change the law so that an entity other than RACI could be the licensee, and 3) the Commission would have to approve the new licensee. Mr. Flynn stated that if the Commission approved the First Amendment, they would not be breaking the law, because the amendment contemplates the law being changed. If the Legislature does not change the law, the sale would never come before the Commission.

Commissioner Allen expressed concern about setting a precedent that would affect others in the industry. Mr. Flynn stated that he did not feel the amendment would establish a

negative precedent as the proposed sale could not come before the Commission without the Legislature changing the law. He stated that he did not feel the Legislature would change the law solely for PMR&C's benefit, it would have to impact all licensees. Mr. Flynn stated that the Legislature could make the needed change in the law now if they so desired, with or without the proposed First Amendment.

Commissioner Hansen asked Jeff Farrell, Assistant Attorney General for the Commission, what impact the Commission's continued denial of the Lease would have. Commissioner Peyton stated that the Commission has not denied the Lease, only the First Amendment.

Mr. Farrell stated that to judge the impact of the Lease as a whole would be difficult because there are a number of ways the situation could go due to the positions of the various parties involved. With regard to the First Amendment, he understands Commissioner Peyton's position that all parties had reached an agreement that did not include the proposed amendment. Mr. Farrell stated that he did not see a reason for concern in approving the amendment due to the fact that if Polk County did manage to sell the facility, it would have to come before the Commission for approval. He noted that Polk County's asking price for the facility far exceeds the value of the property and includes an amount for the ability to operate the enterprise. The Commission would have the opportunity to deny the license based on the terms of the sale.

Commissioner Peyton stated that the proposed amendment sets up a situation where a non-licensee can broker the license. When you have one entity in possession of certain real estate that another party would like to have possession of, and the only way to obtain possession is overpaying for the property, it sets up a situation in that the property will be sold to the highest bidder. Should that happen, he feels RACI would attempt to match an offer that is unreasonable.

Mr. Farrell stated that if Polk County sold the facilities, and RACI felt the price was too high, they would have the ability to come before the Commission to object to the sale and ask the Commission to deny the sale.

Mr. Flynn stated that he has advised RACI that the Lease must be looked at with two amendments, and to disallow any part of it means the Lease would not be valid. That is also Polk County's position. He asked Mr. Farrell, as counsel for the Commission, if he agreed or disagreed. Mr. Farrell stated that the Commission approved the Lease in October with two conditions, both of which have been satisfied with the Second Amendment to the Lease. He noted that the First Amendment is a separate issue that was not discussed by the Commission at any time. Mr. Farrell stated that the Commission's position is that the Lease was completed with the Second Amendment; but that does not preclude them from considering the First Amendment.

Mr. Flynn stated that under Iowa Code, the County, City or any municipality that enters into a lease or contract exceeding three years has to hold a public hearing. Any agreement reached, even if it has approved by the Commission, is not binding on the

County, City or municipality until the public hearing is held. The Supreme Court has ruled that anyone who enters into a contract with a governmental body without following the public hearing requirement, does so at their own risk and does not have a valid and binding contract. The agreement that emerges from the public hearing is the official agreement, in this case, the Lease with the two amendments. In Mr. Flynn's opinion, that is the only agreement enforceable against the County. He stated that if the Commission denies the First Amendment, then they are in effect saying that RACI and Polk County do not have a valid Lease.

Chair Sealock stated that she agreed with Commissioner Peyton's comments. She acknowledged the Commission's frustration and skepticism with Polk County and their motives in adding the amendment at the last minute. Chair Sealock noted by denying the First Amendment, the Commission is inviting additional controversy. She noted that when Gary Palmer addressed the Commission at the March meeting that was the first time anyone from RACI had talked positively about the relationship with the County. In her opinion, it is time for all parties to come to an agreement and move forward and not have to address the same issues month after month.

Mr. Farrell asked Mr. Flynn if the County and RACI have formally approved the Lease with the two amendments. Mr. Flynn indicated they had. Mr. Farrell asked if the Lease terminated the 1994 Operating Agreement. Mr. Flynn stated the 1994 Operating Agreement would be terminated as soon as the Commission approves the Lease. Additionally, the $3 million bond payment will not be made until the Lease is approved. Mr. Farrell asked Mr. Flynn if the agreement reached as the basis for the settlement of the contested case hearing terminated the 1994 Operating Agreement. Mr. Flynn again noted that it indicated termination would occur on approval of the Lease. He stated that the proposal stated that a new lease would be executed to be effective January 1, 1998 and would replace the Operating Agreement. He noted that the parties have been informally operating under the terms of the Lease, subject to Commission approval.

Commissioner Peyton stated that he was not taking issue with the fact that RACI may not have a binding agreement with the County; but all that is necessary is for the County to take the step of approving the Lease. In his opinion, if the Commission approves the Amendment, it would be like saying the agreement reached last fall has no effect on the County, and the County was a party to that agreement. Commissioner Peyton stated that the integrity of the Commission's Order in the contested case hearing, as well as the whole process, was at stake. He noted that if Polk County wanted to take the position that the agreement was not binding because they did not follow the letter of the law, that was their prerogative; however, he felt Polk County should respect the agreement that was entered into because they were a party. Mr. Flynn questioned whether or not Polk County was really a party to the agreement. Commissioner Peyton noted that they were a related party to the contested case proceedings.

Mr. Flynn stated that RACI empathized with the Commission because they went through the same indignation as the Commission. RACI was irritated that the County used the procedural gaff to come back and ask for changes to the Lease. He noted that RACI had

added the provisions requiring the Legislature to change the law and any sale to come before the Commission. The agreement stated there would be a Lease and addressed some of the provisions to be included. Mr. Flynn stated that he feels the County could argue that the actual formal Lease was not presented and was not part of the agreement.

Commissioner White stated that the Lease was incorporated into the Order. He noted that RACI came to the hearing with a Proposed Lease, which the Commission incorporated into their Order. Mr. Flynn stated that his understanding was that RACI came to the Commission with a proposal which stated there would be a lease and set forth some of the terms of the lease. Commissioner White noted that one of the terms was the right of refusal if the property was sold.

Commissioner White stated that he was troubled by the fact that the Commission had gone through a contested case hearing and lengthy deliberations in which he accepted a provision that he did not agree with. He noted that the Commission felt Polk County should be a landlord receiving rent payments and RACI should control the rest of the money. Instead, they came back with a proposal to give Polk County more money than just the rent payments they would receive as a landlord. Commissioner White stated that he did not agree with the proposal but accepted it for the sake of Commission unity. He noted it was the Commission's intent for RACI to have five years of peaceful possession. In the event the property was sold, RACI would have a right to match the offer, and if they couldn't, RACI might have a new landlord, but they would still be in possession of the facility. In his opinion, the First Amendment to the Lease defeats the Commission's purpose in that it would allow the County to remove RACI from the premises if they can't match the accepted offer for the property. Commissioner White expressed concern over the fact that the amendment refers to a gaming license versus a pari-mutuel license. He feels the County could use the amendment as a vehicle to eliminate pari-mutuel racing at PMR&C. Commissioner White stated that he had not changed his view with regard to the First Amendment, and was still very much against it.

Mr. Flynn reiterated that he felt the Commission could approve the Lease, including the First Amendment, without waiving any rights. In his opinion, even if the Legislature authorized a new licensee, the Commission would thoroughly review and question the new licensee to make sure they did not intend to undermine, impair or extinguish pari-mutuel at PMR&C and make pari-mutuel a condition to any license issued. Commissioner White stated that he felt if the Commission approved the First Amendment, they would be opening the way for the Legislature to make the necessary changes to the law.

Commissioner Hansen stated a desire to focus on substance versus procedure and rhetoric. He stated that he feels the County can deny the Lease if the Commission does not approve the First Amendment, propelling the parties back into the Operating Agreement. In his opinion, there are ample safeguards built into the Amendment – legislative action and Commission approval. Additionally, he feels this amendment is the only way to bring closure to the matter. Barring that, he feels the issue will reach a higher level of controversy. Commissioner Hansen moved to reconsider the vote by

which the First Amendment to the Lease between RACI and Polk County was defeated. He stated the motion did not require a second.

Chair Sealock called for any other discussion regarding the issue. Commissioner Allen stated that she had concerns regarding the First Amendment. She stated that, in her opinion, the Commission can not arbitrarily grant an unknown third party the right of a license without going through all of the required steps. Noting that PMR&C is the only gaming entity in Iowa owned by county government, she feels a precedent could be set which would affect other licensees. Commissioner Allen offered a substitute motion, proposing that this request be submitted to the Attorney General for his opinion on this issue.

Mr. Farrell advised Commissioner Allen that she could not offer a substitute motion on a motion to reconsider. Commissioner Hansen stated there was nothing to prevent Commissioner Allen from offering her motion once the Motion to Reconsider had been disposed of.

Mr. Farrell advised that she could request advice from the Attorney General's (AG's) Office in writing after the vote. Commissioner Allen stated that she is not ready to vote until she receives an opinion from the AG's office as to the legality of what she is being asked to do. Mr. Farrell clarified that Commissioner Allen was asking for a formal AG's opinion. Commissioner Hansen stated that he was willing to withdraw his motion to reconsider pending the submission of an AG's opinion. Commissioner Peyton asked if the Motion to Reconsider had to be considered at the meeting immediately following the meeting in which it was made. Mr. Farrell stated that the Motion to Reconsider could be deferred. Commissioner Hansen noted that the Motion to Reconsider had been considered, and that he was willing to defer final action on the Motion to Reconsider due to Commissioner Allen's request.

Commissioner Peyton asked what kind of an opinion the Commission would be seeking from the AG. He voiced his concern that this issue may not fall within an area in which the AG can issue an opinion. Mr. Farrell stated that the AG would not issue a formal opinion on areas that deal with deciding factual matters. He indicated that the AG would have to review the request for an opinion before deciding whether or not to issue an opinion. Commissioner Allen stated that she was looking for some guidelines from the AG as to whether the First Amendment was contrary to current regulations.

Commissioner Hansen reiterated that he was willing to defer his Motion to Reconsider to allow Commissioner Allen to submit her request for an AG's opinion. He seconded Commissioner Allen's motion. Chair Sealock called for a roll call vote on Commissioner Allen's request for a formal AG's opinion regarding the First Amendment to the Lease between RACI and Polk County. The motion carried on a 4-1 vote, Commissioner Peyton voted no. (See Order No. 98-48)

Chair Sealock called on Jack Ketterer, Administrator of IRGC, to address the following rules before the Commission under Emergency Adopt & Implement and Notice of Intended Action:

- Rescind subrule 10.6(2), paragraph "i", and inserting new paragraph
- Amend subrule 10.6(4) by adding new paragraph "d", and relettering existing paragraphs "d" through "f" as paragraphs "e" through "g"

Mr. Ketterer advised the Commission that the rules addressed the administration of lasix to horses, and are a result of legislation passed which became effective upon enactment. It is necessary to emergency adopt these rules in order to be in compliance with the statute. He recommended Commission approval.

Commissioner Hansen moved to approve the Emergency Adopt & Implement and Notice of Intended Action regarding subrules 10.6(2) and 10.6(4). Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 98-49)

Chair Sealock moved to the next agenda item – Compliance with Rule 491-20.11(6)(a)(3) - Qualified Sponsoring Organization Required to Establish Written Procedure concerning Avoidance of Conflict of Interest when determining Distributions. Mr. Ketterer indicated this item was placed on the agenda as a carryover from the March meeting due to the Commission's concern that Iowa West Racing Association (IWRA) did not have a written Conflict of Interest policy as required. He noted that further investigation by staff found that Missouri River Historical Development (MRHD), Southeast Iowa Regional Riverboat Commission (SIRRC) and Clinton County Gaming Association, LTD. (CCGA) also did not have the required Conflict of Interest policy in place. He noted that the Commission has received copies of policies recently adopted by IWRA and MRHD. He indicated the Commissioner's packets contained information from SIRRC and CCGA regarding proposed policies that those organizations will address at their next regularly scheduled meetings, which will occur between now and the next Commission meeting.

Chair Sealock called on IWRA. Jerry Mathiason, Associate Director of IWRA, introduced Chuck Smith, President of IWRA, and Francis Clark, a member of the Iowa West Foundation (IWF). Mr. Mathiason advised the Commission that IWRA had passed a "Board Pledge", which addressed a variety of issues such as attendance and participation in planning. He noted it contains a conflict of interest section that IWRA passed, and that IWF will be meeting next Tuesday (April 22, 1998) to consider the "Board Pledge".

Chair Sealock advised Mr. Mathiason that the Commission had hoped that the wording in Section 8 would preclude board members from lobbying other members and voting on grant requests submitted by other nonprofit boards on which they sit. Mr. Mathiason advised Chair Sealock that the Board was unified on this issue. The IWRA Board felt the proposed wording was sufficient, as it requires Board members to declare potential problems within those areas, personally and professionally. At that time, the IWRA board will determine whether or not a conflict of interest is present. Mr. Mathiason

stated that the policy does state that a member shall not vote on a grant if they would receive an economic benefit. The IWRA board will then discuss and decide how much conflict, if any, is present, but the board member must declare the potential conflict.

Commissioner White expressed concern over the fact that during 1997, IWRA distributed approximately $9 million. Of that amount, almost 60% went to organizations on which an IWRA board member sat on the recipient board. This gives the perception that if an organization desires to receive a grant from IWRA; the chances for that organization are not very good unless a member of the IWRA board serves on the board of your group. Commissioner White noted that IWRA had given $4 million to the Council Bluffs Public Library, and there are three IWRA board members on the public library board. He stated that IWRA should have a policy stating that board members who sit on the boards of other organizations can not lobby other IWRA board members to support the grant request for the other board. Commissioner White questioned why the IWRA was set against having a rule stating that IWRA board members could not vote on the grant requests from those organizations on which they sit on the board.

Chair Sealock advised Mr. Mathiason that every other licensee has included the language being requested. Mr. Mathiason stated that IWRA feels they have complied with the request. He noted that IWF held a special meeting to discuss a grant. Three members declared the potential for a conflict of interest. Following board discussion, it was determined that two did not have a conflict of interest, but the other one did. That board member did not vote on the grant.

Commissioner White stated that Mr. Mathiason is addressing a policy that is not written. He stated that the Commission is regulating gambling, which is a highly regulated industry, needing high integrity, disclosure, and principles of conduct. He stated that board members would only be prohibited from voting if they would receive an economic benefit via the granting of the request for funds. Commissioner White expressed concern over the fact that IWRA board members discuss and determine whether or not a conflict of interest is valid or not. He stated that if a Board member indicates a possible conflict of interest with regard to a grant request, that Board member should not vote on that grant.

Mr. Mathiason advised the Commission that IWRA's policy provides that board members must declare the possibility of a conflict of interest. If the Board determines there is a conflict, then the member does not vote on the grant. He noted that IWRA had reviewed a number of policies prior to drafting their conflict of interest policy.

Mr. Smith stated that IWRA had drafted their conflict of interest policy as if they were administering public funds. He noted that in the case of the library, one member who sits on both boards advised the IWRA board of her involvement with the library board and did vote on the grant. Mr. Mathiason indicated that IWRA disagreed with the Commission's position, but would comply with any directives.

Commissioner White noted IWRA's past pattern of favoring organizations on which IWRA board members sat on the boards of those organizations, and the lack of turnover on the IWRA board.

Chair Sealock called for a motion. Commissioner White moved to deny the Conflict of Interest policy of IWRA as written in the Board Service Commitment Pledge. Commissioner Peyton seconded the motion. Hearing no further discussion, Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-50)

Mr. Ketterer advised Chair Sealock that the remaining items under this agenda item could be combined. Hearing no discussion to the contrary, Chair Sealock called for a motion. Commissioner Allen moved to approve the Conflict of Interest policies submitted by MRHD, SIRRC, and CCGA. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-51)

Prior to the Commission addressing expansion request from three licensees, Commissioner Allen made a statement regarding expansion of gaming in Iowa. She stated that she had hoped to have a vote one way or the other regarding a moratorium from the Legislature. Noting that both Legislative Houses have agreed in concept to a five-year moratorium but have not reached a consensus on the expansion of gambling games, she feels this puts the Commission in a catch-22 situation. Commissioner Allen expressed concern over the number of licensees requesting authorization to add gaming positions at their facilities. She stated that the Commission should establish an equitable procedure to granting requests for additional gaming positions. Commissioner Allen suggested an interim study, possibly the afternoon prior to the May meeting, to allow the Commission to discuss their concerns and come up with a comprehensive plan to address various issues facing the Commission. She noted that Commissioner Hansen had made a request during the January meeting to establish some guidelines for granting expansion requests.

Mr. Ketterer noted that the Commission is in an awkward position having to decide whether to allow the requested expansions when the Legislature has not taken any definitive action limiting the expansion of gambling in Iowa. He noted there have been several amendments, some indicate no additional expansion of gambling games upon enactment while some allow Commission discretion until July 1. He feels that Commissioner Allen is suggesting a work session to discuss a uniform policy toward the expansion requests. If the work session took place in May, the Commission would have the benefit of knowing what action, if any, the Legislature had taken. Mr. Ketterer noted that Commissioner Allen's request was not an agenda item, but she could make a motion to defer any action on the expansion requests individually.

Chair Sealock noted the Commission is operating under an existing law.

Commissioner Hansen reserved the right to object. He stated that if the majority of the Commission feels the expansion requests should be shelved until after the Legislative

session is over, that is what should be done rather than having the licensees make their presentation, then possibly having action deferred, which would require a second presentation later.

Chair Sealock called on Riverboat Development Authority (RDA)/The Connelly Group, L.P., license holders for the President Riverboat in Davenport. Mark Lohman, General Manager, stated that he understood the dilemma facing the Commission, but noted that this agenda item was carried over from the March Commission meeting due to a request for additional market information. He noted the President is requesting authorization to reconfigure the casino floor to add 66 slot machines and make changes to the types of table games being offered. There would not be a decrease in the number of table games.

Following a brief discussion, Commissioner White moved to approve the request of RDA/The Connelly Group, L.P. to reconfigure the casino floor to allow the addition of 66 slot machines. He noted that this agenda item had been deferred at the March meeting for the purpose of obtaining additional information, not to determine what the Legislature was going to do regarding a moratorium. Commissioner Hansen seconded the motion.

Chair Sealock asked if there was additional discussion. Commissioner Allen asked Mr. Lohman the number of slot machines currently on the riverboat. Mr. Lohman indicated there were 838.

Hearing no further discussion, Chair Sealock requested a roll call vote. The motion carried on a 4-1 vote, Commissioner Allen voting no. (See Order No. 98-52)

Chair Sealock called on Riverbend Regional Authority/Lady Luck Bettendorf (RRA/LLB), L.C., license holders for Lady Luck Bettendorf. Nancy Donovan, General Manager, addressing Commissioner Allen's earlier comments, indicated they would look forward to an established process for expansions in the future. It is their position today; however, that the Commission was advised of a $39.5 million expansion in May 1997 and therefore, this request has been before the Commission for almost a year. Ms. Donovan noted that Lady Luck was requesting permission to add 230 slot machines and six table games.

An updated site plan was distributed to the Commission. Lady Luck's original investment was almost $48 million. In May 1997, the Commission approved their request to proceed with a $39.5 million expansion project. The parking ramp opened in November 1997, the railroad overpass will be completed in July 1998, the 256-room hotel will open in September 1998, and the marina is scheduled to open in April 1999.

Ms. Donovan also talked about the retail center. LLB is considering using 15,000-20,000 square feet for banquet/meeting space. They are also considering a restaurant within the facility.

Ms. Donovan advised the Commission that LLB experienced their highest level of revenue on record in March, and they are on pace to exceed that in April. She requested the Commission's approval of their expansion request.

Commissioner Allen asked Ms. Donovan the current number of slot machines. Ms. Donovan advised her there are 961 machines on the riverboat. Commissioner Allen stated that the additional 230 machines would increase the number to almost 1200. Ms. Donovan stated that LLB is moving the existing showroom on the vessel to the pavilion and will install the slot machines in that area.

Commissioner Allen, noting that the gaming industry is always in a state of fluctuation, asked for deferral on any more expansion until the Commission has had an opportunity to establish some standards.

Commissioner White asked Ms. Donovan about the working capital. Noting that long term liabilities are secured by loan documents, etc., there are short term liabilities that are more than likely held by Iowa companies which are unsecured. At the end of 1997, LLB had $4.7 million in assets and $8.9 million in current assets. Commissioner White expressed concern that the parent company was pulling out revenues, leaving liabilities to be paid with future revenues.

Michael Hirsch, Chief Financial Officer, advised Commissioner White that LLB was a joint venture between Lady Luck Quad Cities and Bettendorf Riverfront Development Company. Under this arrangement, Lady Luck Corporation can not take cash out of the property. He noted that profits are currently being used for the $39.5 million project. LLB put in $7.5 million of their own funds into the current project. Mr. Hirsch stated that vendors have been paid on a timely basis.

Chair Sealock requested a motion. Commissioner White moved to approve the request by RRA/LLB to reconfigure existing casino space to add slot machines and table games, which was deferred at the March 5, 1998 Commission meeting. Commissioner Hansen seconded the motion.

Hearing no further discussion, Chair Sealock requested a roll call vote. The motion carried 4-1, Commissioner Allen voting no. (See Order No. 98-53)

Following a brief break, Chair Sealock called on Mr. Ketterer, who introduced Kathy Howard and Coette Gida, Administrative Assistant and Licensing Assistant respectively, for IRGC in Ft. Madison.

Chair Sealock called on Jeff Terp, Vice President of Business Development for Ameristar, to present their master plan for the expansion of their facilities in Council Bluffs. Mr. Terp explained the request before the Commission was a two-fold request: one for the long-term expansion of the land-based facilities and the second was for an expansion of the riverboat.

Mr. Terp addressed the master plan for the land-based facilities first. One of the first items will be the expansion of an entertainment facility. When Ameristar made their original presentation for a license, the Commission, and Council Bluffs, expressed concern that the market could not support two large entertainment centers. Ameristar is proposing a 240 car per level, four level parking ramp. Additionally, a RV park for an undeveloped area on the property. Mr. Terp noted that Ameristar purposely designed their facility to allow for future expansion. The master plan also calls for two potential hotel towers. The last item is a proposed retail center; however, it would not be built and funded by Ameristar. They are hoping to interest some local developers and businesses, similar to the situation with the Kinseth hotel.

Mr. Terp advised the Commission that the one hotel tower is approximately $15 million, the garage is approximately $7 million, the RV park is about $1.6 million, and the entertainment facility is close to $5 million. If he were to prioritize the master plan, Mr. Terp indicated they would probably start with the entertainment center and the garage, then the hotel tower and then the RV park. If the Commission gives its approval of the master plan today, work would begin on the design with final plans brought back to the Commission for approval. Mr. Terp noted that the proposed expansion of the land-based facilities and riverboat would be paid for out of Ameristar's existing cash flow and line of credit.

Chair Sealock asked Mr. Terp if the land-based and riverboat expansions were tied together. Mr. Terp indicated they were not – that they were stand-alone projects. He noted that Ameristar did not want to get into a "substantially complete" debate similar to the one prior to the property opening. He noted that Ameristar is asking for approval of the master plan concept.

Chair Sealock noted that the information provided to the Commissioners indicated the work on the riverboat would begin right away, while the land-based work would probably begin in the fall. Mr. Terp explained that if Ameristar received approval at this meeting, they would begin architectural designing and planning. He noted that the order in which he discussed the additions to the land-based facilities was probably the order in which they would be built. He stated that construction on the entertainment facility would probably begin in early 1999. Chair Sealock questioned his use of the term "probably". Mr. Terp stated that he was cognizant of previous discussions, and the fact that Ameristar has yet to meet a construction deadline. He stated that he didn't want to specify that construction would begin on a certain date only to have it delayed by weather problems.

Chair Sealock noted there have been instances in the past where licensees have indicated plans for land-based facilities and the riverboat, then proceeded with the boat first and failed to follow through on the land-based improvements. Mr. Terp stated that he understood her concerns; but when Ameristar submitted their original application, they proposed a $75 million project. In the end, they built a $110 million project, and he feels Ameristar met and exceeded every expectation and commitment made to the Commission. It is their intent to continue to do so. Mr. Terp stated that he did not want to specify a date for construction to begin, and then not do so. He noted that all of the

construction would not take place at one time as it would be too disruptive to the customers. He anticipates there will be an organized staging. Mr. Terp noted the possibility that some of the construction will have to be staged from the river. Mr. Terp noted that Ameristar is cognizant of the fact that they have to appear before the Commission each year for the renewal of their license, and the referendum that will be held in 2002.

After a brief discussion regarding the proposed construction schedule and investment for the land-based facilities, Commissioner White asked Mr. Terp about the investment for the riverboat expansion. Mr. Terp estimated the investment to be $10-$11 million, with a three-month design period, and six months for construction. Commissioner White asked about the construction schedule for the land-based expansion. Based on approval today, Ameristar could begin designing the various projects, and hopefully would be able to break ground in spring 1999 for the entertainment center with an estimated construction schedule of 12-18 months. The parking garage would take approximately 8-9 months.

Hearing no additional questions concerning the proposed land-based expansion, Mr. Terp moved on to the proposed riverboat expansion. He noted that when the Commission was determining the number of licenses to issue in the Council Bluffs market, they had a market analysis done which indicated the market was $147 million. The market today is between $300-$310 million, and was between $270-$276 million. Mr. Terp noted that Ameristar currently has 1,072 slots and 43 table games for a total of 1,373 gaming positions, or a total of 29.75% of the gaming market. He noted that Harveys has 1,087 slot machines and 55 table games for approximately 1,472 gaming positions, or 33.9% of the gaming market. Bluffs Run has 1,242 slot machines, and has 36.7% of the market. Mr. Terp stated there are a total of 4,087 gaming positions in the Council Bluffs market at this time, or about $73,400 per gaming position. The above mentioned market analysis stated the market should have revenue of $59,200 per position. A statewide analysis conducted in October 1995 increased the Council Bluffs market to $157 million. At that time, there were approximately 3,600 gaming positions. He noted the current market is twice that estimate by the market study reports. Mr. Terp stated that if Ameristar uses the numbers from the market studies and adds the proposed gaming positions of approximately 454, the total gaming positions for the market would be 4,537. Depending on which market study is used, the number of gaming positions would be either 500 or 1600 gaming positions below what the market can support. Mr. Terp noted that Prairie Meadows' has 1,054 slot machines in a market with a population of about 300,000, and have revenue of around $126 million. He noted that the Quad Cities area has approximately 3,575 gaming positions, including Rock Island, with revenue of approximately $160 million. Mr. Terp stated that the Council Bluffs market is much larger than either of those markets, but currently has about the same number of gaming positions as the Quad Cities market.

Mr. Terp showed the Commission a drawing of the riverboat with the third floor deck. He noted that the addition of the third floor would still not be as high as the highest points on the current vessel, which are the pilothouse and the elevator shaft. It is possible they might gain six inches as computer analysis shows that the water draft will go down six

inches due to the additional weight from the third floor. This could increase Ameristar's ability to cruise.

Mr. Terp advised the Commission that the riverboat expansion was twofold. He noted they are requesting permission to remove two offices from either side of the boat and add 15 machines in each location. On the proposed third floor, they would like to add six blackjack tables, a poker room with eight tables, and approximately 320 slot machines. They will continue the escalators from the second deck to the third deck in order to maintain the architectural integrity of the facility and service to customers.

Mr. Terp stated that another justification for the proposed expansion is service to existing customers. He noted their theoretical current maximum is 1,373 gaming positions. Their effective rate would be 80% of their gaming positions filled at all times. During the last 151 days, Ameristar has exceeded the effective maximum on 51 days, or 33.8% of the time. He noted that all three Council Bluffs facilities are operating at capacity and turning away customers, particularly on the weekends. The proposed expansion will add 200 jobs in the community, and will be good economic development for the community.

Hearing no further discussion, Chair Sealock called for a motion. Commissioner Hansen moved to approve Ameristar's request for approval of a master plan for expansion of their land-based and riverboat facilities. Commissioner White seconded the motion.

Chair Sealock asked if there was any discussion. Commissioner Allen, noting that this agenda item was not deferred from the previous meeting, and moved to defer action until the next Commission meeting, which would give the Commission an opportunity to have a study meeting to discuss all of the expansion taking place. Commissioner Peyton seconded the motion.

Mr. Terp asked Mr. Farrell if legislation were passed that would prevent any future expansion if that would pre-empt any further discussion. Mr. Farrell advised Mr. Terp that would depend upon the wording of the legislation and the effective date of said legislation. Commissioner White noted that current moratorium proposals are to become effective upon enactment. Mr. Terp asked if the proposals were passed and became effective upon enactment, and that date was prior to the next Commission meeting, that would mean Ameristar's request would be tabled. Mr. Farrell advised Mr. Terp that the Commission would have to comply with the statute.

Chair Sealock called for a roll call vote on Commissioner Allen's motion to defer action on Ameristar's request. The motion was defeated on a 3-2 vote, Chair Sealock and Commissioners Hansen and White voting no. (See Order No. 98-54)

Chair Sealock, noting there was another motion on the floor, called for any further discussion. Commissioner White stated that he believes Ameristar will complete the proposed land-based expansion, even though it is not tied in to the expansion of the riverboat.

Hearing no further discussion, Chair Sealock called for a roll call vote on Commissioner Hansen's motion to approve Ameristar's request. The motion carried on a 3-2 vote, Commissioners Peyton and Allen voting no. (See Order No. 98- 55)

Chair Sealock called on SIRRC/CBC, L.C. regarding their request to change the boat's departure date from Burlington to May 18, 1998. Dan Kehl, General Manager, advised the Commission CBC would like to stay in Burlington through the above date as the state women's bowling tournament will be in town. Additionally, the river level needs to drop approximately 5' before the vessel can safely return to Ft. Madison.

Hearing no discussion, Chair Sealock called for a motion. Commissioner Hansen moved to approve SIRRC/CBC, L.C.'s request to change the departure date from Burlington. Commissioner Peyton seconded the motion. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-56)

Chair Sealock moved to the review of the annual audits submitted by the Belle of Sioux City (BSC) and Miss Marquette (MM). Mr. Ketterer noted that these two licensees were asked to be available at this meeting to discuss their annual financial statements.

John Pavone, General Manager of the BSC, was present to answer questions regarding the audit report referred to during the license approval and the purchase of 30 new games, which was deferred at the March meeting. He introduced Dale Black, the Chief Financial Officer for Argosy Gaming Company.

Commissioner Peyton noted that given the financial condition of the licensee, he expected that the auditors might have issued a going concern statement, which did not occur. He asked what steps the company had taken to assure them there wasn't a problem or whether he was assuming something that did not happen.

Mr. Black stated that Commissioner Peyton's comments were well founded if BSC's operation was looked at from a net income standpoint. He noted that the industry is usually evaluated on cash flow versus income. The operating cash flow for BSC last year, prior to management fees or inter-company lease charges, was $1.8 million on a revenue basis of $20 million. Mr. Black advised the Commission that BSC's debt is primarily related party debt, and it is not Argosy's intent to do anything that would jeopardize the operation.

Commissioner Peyton stated the reason he requested the financial statement be presented was that last year, BSC lost more than what their actual net worth was remaining. If 1997 was as bad as 1996, they would be insolvent. He noted the loss had been cut in half, but they were still on pace to be insolvent within the next fiscal year. Mr. Black advised Commissioner Peyton that their earnings pace is ahead of last year.

Commissioner Peyton stated that he felt the operation needed to be viable from a balance sheet perspective, as well as a cash flow and operations standpoint.

Mr. Pavone advised the Commission that BSC's operation had a 13% increase in its top line revenue last year and has approximately $2 million in investment accounts in local banks in any given month. He feels the concerns are with where the money goes. Mr. Pavone stated that BSC has $24 million in revenue, no debt, no receivables, and sufficient cash to pay accounts on a monthly basis.

Mr. Pavone stated the Commission has a request before them for authorization to purchase 30 new slot machines. He noted they would be asking for permission to purchase an additional 90 machines to continue the capital improvements being made to the operations. They hope to make approximately $2 million in improvements during the year.

Commissioner White, noting that the license for BSC has been approved subject to the submission of the audited financial statement, stated that a motion would be needed to show the request had been satisfied.

Commissioner Peyton moved that the information provided by BSC was satisfactory to comply with the conditions placed on the license. Commissioner White seconded the motion. Hearing no further discussion, Chair Sealock called for the vote. The motion carried unanimously. (See Order No. 98-57)

Chair Sealock asked Mr. Pavone if he wished the Commission to consider the contracts submitted by BSC at this time as well. Mr. Pavone stated they had asked for 30 machines last month, which he felt was tied to the review of the financial statement. He felt it would be prudent to put the request for 30 machines with the current request for 90 machines and address them at the same time.

Commissioner Peyton moved to approve the contracts submitted by BSC for February 1998 inter-company charges, 90 replacement slot machines from IGT, and the 30 machines deferred at the March meeting. Commissioner Hansen seconded the motion. The motion carried unanimously. (See Order No. 98-58)

Following a short break, Chair Sealock called on MM regarding their financial audit. Kim Kreber, Director of Finance for MM, introduced Roger Knott, Director of Security, Compliance and Transportation for MM, and Mike Beck, Director of Casino Operations for Sodak Gaming.

Commissioner Peyton, noting MM has a $1 million positive cash flow, but have a number of similar trends in the operation. He stated that he was cognizant of a large write off due to write-downs of assets.

Ms. Kreber stated the financial report shows an operating loss of $8.8 million as a direct result of an $8.6 million write down of impaired assets. This write down was related to the good will value added to the value of the boat at the time it was purchased by Sodak Gaming. Since that time, Sodak has re-evaluated the value of the boat and determined that it was over-valued.

Mr. Beck advised the Commission that Sodak is very happy with the operations at MM, and that there was a 97% increase in EBITDA during the first quarter.

Hearing no further questions, Chair Sealock called for a motion. Commissioner Peyton moved that the financial statement presented was sufficient to satisfy the conditions placed on the license of MM at the March meeting. Commissioner Hansen seconded the motion. The motion carried unanimously. (See Order No. 98-59)

Ms. Kreber advised the Commission that MM had submitted the following contracts for Commission approval:

- Custom Doc King – Pre-Manufactured Docks
- First American Administrators – Health Insurance Provider

She asked if they could act on those at this time. As there were no objections or questions, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-60)

Chair Sealock then called on Racing Association of Central Iowa/Prairie Meadows Racetrack & Casino (RACI/PMR&C) regarding their request for approval of the 1998 Thoroughbred and Quarter Horse racing season. Tom Timmons, Vice President of Operations, advised the Commission this request is for the mixed meet, which will commence on July 17, 1998 and end on September 29, 1998.

Chair Sealock called on Linda Vanderloo, Director of Racing/Administration, for her comments on the request. Ms. Vanderloo stated that the majority of the information has already been reviewed during the approval of the first meet. She noted there would be a change in the officials for the second meet. Ms. Vanderloo stated that staff members from IRGC and PMR&C had discussed the security arrangements and would continue to work together should changes be necessary.

Hearing no further questions regarding the 1998 Thoroughbred and Quarter Horse race meet, Chair Sealock called for a motion. Commissioner Allen moved to approve the 1998 Thoroughbred and Quarter Horse racing season as submitted by RACI/PMR&C. Commissioner White seconded the motion. The motion carried unanimously. (See Order No. 98-61)

Chair Sealock moved on to PMR&C's contract submissions, which were as follows:

- BP Johnson Inc. – Lease Agreement for Administration Building
- Job Service of Iowa – State Unemployment Taxes
- Lifeline Shelter Systems – Purchase Trailer to Provide Locker Room Facilities for Female Jockeys
- Iowa Dept. of Agriculture and Land Stewardship – Breeders Award

- Mid American Energy – Electricity
- AmGas – Natural Gas
- Polk County Treasurer – Operating Agreement, Percent of Net Receipts, Escrowed Funds, Potential IRS Early Payment, Gaming Taxes
- City of Altoona – Gaming Taxes, Water and Sewer
- Treasurer, State of Iowa – Taxes, Unclaimed Winnings, Drug Testing
- Internal Revenue Service – Taxes
- Century Systems – Computer Hardware & Software Components and Service

Commissioner White, noting that the contract with the Polk County Treasurer referred to the 1994 Polk County Operating Agreement, asked what that was. Mr. Timmons stated that the Request for Transaction Approval (RTA) form requires the licensee to show what has been paid in the previous year as well as what they expect to pay the vendor in the current year. They are simply referencing the amount paid to Polk County under the Operating Agreement during 1997, and the amount referenced under Net Receipts is what PMR&C anticipates paying Polk County under the Lease. Commissioner White asked, and Mr. Timmons confirmed, that the amount shown is based on the Lease approved by the Commission. Commissioner White asked Mr. Timmons when PMR&C started paying Polk County the net receipts. Mr. Timmons stated that the first payment had just been made.

Commissioner White asked Mr. Timmons if the escrow funds had been paid out. Mr. Timmons indicated they had not, but were due by June 30th. He noted that the bonds have not been paid off at this time. Commissioner White then asked if the ownership of the slot machines had been transferred from Polk County to RACI. Mr. Timmons asked Tom Flynn, legal counsel for RACI, to answer that question. Mr. Flynn indicated that a Bill of Sale had been put into escrow pending pay off of the gaming equipment bonds. He noted those bonds were paid off on April 15, 1998, and that he had received the Bill of Sale on April 16, 1998. The escrow funds of approximately $3 million will be used to retire the general obligation bonds early, which is separate from the bonds issued for the purchase of slot machines and related gaming equipment. Commissioner White asked what collateral was being used to back up the general obligation bonds. Mr. Flynn advised that the real estate, land, and fixtures were being used to secure the general obligation bonds.

Hearing no further questions, Chair Sealock requested a motion. Commissioner White moved to approve the contracts as submitted by PMR&C. Commissioner Hansen seconded the motion. The motion carried unanimously. (See Order No. 98-62)

Chair Sealock called on Bruce Wentworth, General Manager of Dubuque Greyhound Park & Casino (DGP&C), who presented a contract with Herrig & Fritz Insurance for Property and Casualty Insurance and Workers Comp.

Mr. Wentworth advised the Commission that May 1st would be the first day of live racing for the current racing season. He also informed the Commission that on May 9th,

DGP&C would be one of 13 racetracks that have formed a nation-wide race card known as the "Night of the Stars". The races will start on the East Coast. Iowa will be featured in the 7th race. Last year, DGP&C had handle of approximately $1.2 million for the event, and are projecting $1.5 million this year.

Hearing no questions or discussion regarding the contract, Chair Sealock requested a motion. Commissioner Peyton moved to approve the contract as submitted by DGP&C. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-63)

Chair Sealock called on Bluffs Run Casino (BRC). Doug Okuniewicz, Director of Operations, presented the following contracts for Commission approval:

- Acceptance Insurance Company – Workers Compensation & Employers Liability Insurance (Deferred at March 5, 1998 Commission Meeting)
- HAJA, Inc. – Rent on Print Shop Facility (Deferred at March 5, 1998 Commission Meeting)
- Atronic Casino Technology – 20 Slot Machines with spare parts. Purchase to be made upon satisfactory performance during 60-day trial period (Additional)
- Bergman Incentives – Purchase of Promotional Items

Commissioner White requested that the contracts with Acceptance Insurance Company and Atronic Casino Technology be considered separately. Chair Sealock asked for any questions regarding the contracts with HAJA, Inc. and Bergman Incentives. Commissioner White, noting that BRC had not submitted a written lease in March, stated that he found the written lease and the written opinion from an unrelated party with regard to the lease amount very helpful. If BRC had submitted this information last month, the contract would not be up for discussion this month. Commissioner White noted that related party contracts require the licensee to prove that those contracts are proper.

Hearing no further questions or discussion regarding the contracts with HAJA and Bergman, Chair Sealock requested a motion. Commissioner White moved to approve the contracts as submitted by BRC. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-64)

With regard to the contract with Acceptance Insurance Company, Commissioner White stated that he still felt there was insufficient evidence to allow the Commission to act on this contract. BRC had not submitted any documentation showing that a number of companies were offered the chance to bid on this contract. He stated that he did not have any basis on which to approve this contract. Mr. Okuniewicz stated that the insurance broker had sent letters to a number of companies seeking bids on this insurance coverage. Commissioner Peyton advised Commissioner White there was a page included this

month that showed the various companies which had been contacted about submitting a bid on this insurance.

Hearing no further discussion regarding this contract, Chair Sealock called for a motion. Commissioner Peyton stated that he was not totally comfortable with this situation, but would accept the letter provided from a third party with regard to the premium being charged by Acceptance Insurance Company.

Commissioner Hansen advised the Commission that the 128% experience modification serves as a "red flag" to individuals in the industry. In this case, they would take the standardized manual rates and increase them by 128%. He noted that some companies might have a policy stating they will not write coverage if the experience modification exceeds 110%. Commissioner Hansen reiterated his comment from the March meeting that workers comp insurance is the least attractive to an insurance company. He stated that he was satisfied with the documentation provided.

Chair Sealock called for a motion regarding the contract with Acceptance Insurance Company. Commissioner Hansen moved to approve the contract. Commissioner Peyton seconded the motion.

Commissioner Peyton warned the licensee that they should not interpret this motion to indicate that this type of information would be sufficient in the future. He stated he would like to see proof of the bidding process in the future.

Hearing no further discussion, Chair Sealock requested a roll call vote. The motion carried on a 4-1 vote, Commissioner White voting no. (See Order No. 98-65)

Chair Sealock moved to the contract with Atronic Casino Technology. Commissioner White asked how much revenue BRC expects the additional 20 slot machines to increase revenue. Mr. Okuniewicz stated they are projecting $200,000 additional revenues in the first year. Commissioner White asked how much of the projected revenues would go to AIM. Mr. Okuniewicz advised that 24% would go to the gaming tax and AIM would get 40% of the remaining amount. Commissioner White stated that he was not on the Commission when the AIM contract was approved, but that he would not approve a contract giving AIM more money for not doing anything.

Hearing no additional comments or questions, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contract with Atronic. The motion died for lack of a second. Commissioner Peyton moved to deny the contract as submitted. Commissioner White seconded the motion. Chair Sealock requested a roll call vote. The motion carried on a 3-2 vote, Chair Sealock and Commissioner Hansen voting no. (See Order No. 98-66)

Chair Sealock called on Dan Kehl, General Manager of Catfish Bend Casinos (CBC), who submitted a request to Remove the Non-Competitive Provision in Houma/Catfish Bend Contract dated 11/30/93, and substitute an Assignment to MBII of the Non-

Competition Agreement between Catfish Bend and Celebration River Cruises, Inc. Commissioner Peyton moved to approve the contract as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-67)

Chair Sealock called on Ken Bonnet, President of Mississippi Belle II, who submitted the following contracts for Commission approval:

- Adventure Software, Inc. – Computer Equipment, Repairs, Supplies for 1997
- Adventure Software, Inc. – Computer Equipment, Repairs, Supplies for 1998
- Awesome Rental, Inc. – Supplies, Storage Space, Equipment and Equipment Rental (Mostly Flood Related)
- Awesome Rental, Inc. – Supplies, Small Equipment, Storage Space and Equipment Rental for 1998
- Catfish Bend Casinos – Prime Rib Purchased in September 1997
- The Great Midwest Seafood Co. – Food for 1997
- Kehl Enterprises, Inc. – Key West True Value Hardware – Boat Maintenance Items, Tools for 1997
- Kehl Enterprises, Inc. – Key West True Value Hardware – Boat Maintenance Items, Tools for 1998
- Kopp's Market Inc. – Food for 1997

Mr. Bonnet noted that some of the contracts were for 1997, and that under normal circumstances MBII would not have reached the $50,000 level on their own. However, when they started providing food for the CBC operation, MBII food purchases grew rapidly. He noted that IRGC's Gaming Representative on the MBII had found these oversights when reviewing the records for the year.

Commissioner White asked Mr. Bonnet which of the above contracts were related party contracts. Mr. Bonnet advised that the contracts with Adventure Software, Inc. and Awesome Rental were related party contracts. He stated that Kehl Enterprises does not technically meet the related party criteria. He noted that the parents of the majority owners of the MBII own the Key West True Value Hardware. Mr. Bonnet stated that he mistakenly thought there was a $50,000 threshold on related party contracts before they needed to be submitted for Commission approval. He noted that in the future, MBII would secure bids from various computer stores so the Commission can be assured they are getting the best deal. With regard to the purchases from the rental store, MBII gets a copy of their standard pricing book, and can show they receive an additional discount from the stated price.

Commissioner White moved to approve all of the contracts as submitted except for the contract with Awesome Rental for 1998. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 98-68)

Commissioner White moved to defer the contract with Awesome Rental for 1998 until the May Commission meeting, and requested that MBII provide additional information.

Chair Sealock called on Larry Seckington, legal counsel for Southern Iowa Gaming, who presented the following contracts for Commission approval:

- Dale & Leila Bonnett – Option to Purchase Land Necessary for Project
- Gail & Dana Hembry – Option to Purchase Land Necessary for Project
- Don & Jeanne McCuddin – Option to Purchase Lanse Necessary for Project
- City of Osceola/Osceola Water Works Board of Trustees – Amendment to Agreement & Lease
- David & Terri Vopenford – Option to Purchase Land Necessary for Project

Chair Sealock asked if the land option contracts being handled by First Saylor Realty would qualify as a related party contract as Helen Saylor is a member of the non-profit organization. Mr. Seckington advised that Mr. Grace had negotiated all of the options, but when the options are exercised and closed, then they would become a related party matter and a contract covering the commission fees would be submitted. Mr. Seckington stated that the buyer is paying the realtor's commission on the sales. During this discussion, it was determined that the contract with Helen Saylor has already been entered into by Southern Iowa Gaming and should be submitted to the Commission for approval as soon as possible.

Hearing no further discussion, Chair Sealock called for a motion. Commissioner Allen moved to approve the contracts as submitted by Southern Iowa Gaming. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 98-69)

Mr. Seckington advised the Commission that the architects submitted the land-based plans to Mr. Grace for his review. He made substantial changes, and they are hopeful of having the redraft by the middle of May. Mr. Grace has approved the RV park design. Mr. Seckington noted that the proposed annexation legislation was creating some problems for the ramp and bridge project with the DOT; however, he has been advised there will not be a floor vote, so they can proceed. He stated that three meetings have been held with the lead bank for the financing, and hope to have financial documents available at the May meeting.

Chair Sealock called on Mark Lohman, General Manager of The President, who submitted a contract with Thompson & Coburn as the SEC Counsel for the General Partner. 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. 98-70)

Chair Sealock called on Art Hill, Comptroller for Harveys Casino, who submitted the following contracts for Commission approval:

- Bally Gaming, Inc. – 16 Slot Machines (Replacements)
- Sigma Game Inc. – 9 Slot Machines (Replacements)

- Atronic Casino Technology – 9 Units on Trial Basis, May Purchase depending on Performance (Replacements)
- VLC – 6 Units on Trial Basis, May Purchase depending on Performance (Replacements)
- IGT – 12 Slot Machines (Replacements)
- American Express Co. – Company Charge Cards
- Guido Perla and Associates – Design and Construction of Third Floor on Riverboat
- Quality Wine Company – Wine Purchases for Sale in Various Food and Beverage Outlets in Hotel and Casino
- Island Oasis Frozen Cocktails – Product mix for use in frozen drinks
- Andersen Construction – Construction of Training Room and Retail Services area on Lower Level of Hotel Building
- Labor Ready – Temporary Labor for all areas of the Operation
- Merchants Insulation Inc. – Labor and Insulation for Walkway between Boat and Hotel Areas, Part of the Lobby Area
- Telesystems, Inc. – Maintenance Agreements on Switching Equipment

Mr. Hill noted that he had made a couple of errors in submitting the contracts. He requested that the contract with VLC be changed to reflect the purchase of 8 machines. He noted that he had used the wrong form in submitting the contracts, and that he had submitted the additional information required under separate cover.

Commissioner White asked Mr. Hill about the related party contract with Andersen Construction Company. He noted that Harveys had failed to submit bidding sheets, requests to bid, and the add on/deduct sheets relating to the overall cost of the project. Mr. Hill stated that Harveys did receive two bids that were comparable. A third company was not able to submit a bid on the project as they are currently working on the remodeling of the vessel.

Chair Sealock suggested deferring action on the Andersen Construction Company. Commissioner Allen requested that licensees provide the Commission with a standard Proof of Publication regarding the offer to bid.

Chair Sealock called for a motion regarding the contracts submitted by Harveys, omitting the contract for Andersen Construction Company. Commissioner Peyton moved to approve the contracts as submitted. Commissioner White seconded the motion.

Prior to the vote, Commissioner White asked if construction under the contract had started. Mr. Hill advised that the project was approximately 90% complete. Commissioner White asked how that happened. Mr. Hill stated there was not a meeting in February. He noted that Andersen Construction was listed as a vendor in the license renewal, but felt this needed to be submitted separately.

Chair Sealock called for the vote on the motion. The motion carried unanimously. (See Order No. 98-71)

Verne Welch, General Manager of Harveys Hotel & Casino, stated that they intended to submit a request at the May meeting for a parking garage and additional hotel rooms. He noted that the expansion on the third floor is already at capacity, and they have done all they can to expand the capacity of the current vessel. They have looked at purchasing a replacement vessel.

Chair Sealock called on Lady Luck Bettendorf (LLB). Curt Beason, legal counsel for LLB, submitted the following contracts for Commission approval:

- THE Rock Island Bank – Line of Credit
- THE Rock Island Bank – ATM Terminal Agreement

Commissioner Peyton moved to approve the contracts as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-72)

Chair Sealock called on Dubuque Diamond Jo. Jim Rix, Chief Operating Officer, presented the following contracts for Commission approval:

- Baraboo SYSCO – Food Purveyor
- First of America Bank-Illinois, N.A. – Change in Interest Rate and Personal Guarantees on Loan
- Kirchhoff Distributing Co. – Beverage Distributor
- Request to Distribute 10% Interest to Passive Members of GDREC

Mr. Rix noted the original loan with First of America Bank-Illinois was originally approved in August 1996. Due to the current financial position of GDREC, they are willing to lower the interest rate and drop all of the personal guarantees that were a part of the original loan. All other loan covenants remain the same.

Hearing no further discussion regarding the contracts, Chair Sealock called for a motion. Commissioner White asked a few questions regarding the request to distribute interest to the passive investors of GDREC. Commissioner White moved to approve the contracts as submitted by DDJ. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 98-73)

Doug Gross, legal counsel for GDREC, advised the Commission that the District Court had issued a Decision on April 6th on the preliminary motions regarding the Alfredo litigation. One of the issues was whether or not Alfredo had a legitimate claim to ownership on units. One of the conditions for DDJ to retain its license was that Alfredo was not to have ownership interests. The Court dismissed the ownership claims against GDREC. They feel the decision would be sustained should Alfredo appeal the decision.

Chair Sealock moved to Administrative Business. Commissioner White stated that this was an agenda item he had requested. Since his request, he has been advised there will be a work session prior to the May meeting, and that these issues would be more properly dealt with during the work session. Commissioner White requested that this item be deferred.

Commissioner White requested that all related party contracts be separated from the non-related party contracts on the agenda.

Commissioner Hansen stated that he did not want the legislators or the public to be confused by the actions of the Commission during this meeting. He noted there are very distinct attitudes between the House and Senate regarding a moratorium. The House proposed a moratorium bill that stops the expansion of licenses and machines, while the Senate version would not allow any additional licenses but would permit additional machines. Commissioner Hansen stated that the expansion projects approved during the meeting would increase the number of slot machines by 7½% and 11% for the year. Last year, the Commission approved approximately 14% expansion. Referring to the four projects approved, Commissioner Hansen noted that all four are above the average win ratio for both slots and tables. In the absence of specific mandates from the Legislature, he stated that the Commission had no choice but to take the action they did. Commissioner Hansen stated that he did not feel the Commission could stop the growth without a directive from the Legislature. He noted that by limiting the number of machines in Iowa, you would not be shutting down gambling in Iowa. There are three Indian casinos that do not pay Iowa taxes. If machines are not available at other locations, then the standing of the Indian casinos will be enhanced.

As there was no Public Comment, Chair Sealock called for a motion to adjourn. Commissioner Peyton moved to adjourn the meeting. 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 21, 1998

The Iowa Racing and Gaming Commission met at 9:00 A.M. on Thursday, May 21, 1998, at the West Des Moines Marriott, 1250 74th Street, West 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 at 9:00 A.M., and requested a motion to approve the agenda. She noted that the agenda would be amended as follows:

- Defer Harveys Casino Hotel's Presentation of Expansion Plans for Riverboat and Land-based Facilities
- Defer Bluffs Run Casino's Contract with Atronic Casino Technology for the purchase of 20 slot machines with spare parts.

Commissioner Allen moved to approve the agenda as amended. Commissioner Peyton seconded the motion, which carried unanimously.

Chair Sealock called for a motion regarding the minutes from the April 17, 1998 Commission meeting. Commissioner Peyton moved to approve the minutes as submitted. Commissioner Hansen seconded the motion, which carried unanimously.

Chair Sealock moved to Unfinished Business with regard to the Motion to Reconsider Vote to Deny First Amendment to Lease between Racing Association of Central Iowa (RACI) and Polk County. Commissioner Allen noted that she had some concerns regarding the legality of the First Amendment to the Lease. She was concerned that it could result in RACI having to forfeit its license if Polk County would be successful in selling the facility. Commissioner Allen noted that the Commission's rule is very specific in that a license can not be transferred or assigned. Taking all of the issues into consideration, she requested an Attorney General's Opinion, which diminished slightly when the Legislature passed a bill allowing the transfer of a license. The Governor vetoed this legislation on Wednesday, May 20th. Commissioner Allen stated that she had asked the Attorney General to answer the following questions:

- Whether the Commission has the legal authority to approve or deny the First Amendment?
- Whether Polk County, as a party to the contested case proceedings brought against RACI is bound by any final agency action resulting from such proceedings?

Commissioner Allen stated that Jeff Farrell, Assistant Attorney General representing IRGC, responded to the first question by indicating that the Commission could approve the amendment as it is predicated on the understanding that the law would have to be changed before it would be applicable. She then asked Mr. Farrell if the Commission

approved the Amendment if they would be sending a message to the Legislature that they are advocating a change in the law. She also asked Mr. Farrell if the Governor's veto changed his recommendation.

Mr. Farrell stated that he did not feel approving the First Amendment would send a bad message to the Legislature because the First Amendment has been adopted with the understanding that the Legislature would have to change the law before it could be effective. He stated that in replying to Commissioner Allen's request, he did not consider the effect of the bill. He used the statutes as they currently stand.

Commissioner Allen stated that in essence the Commission is right back where they were with the Administrative Rules stating that a license can not be transferred or assigned. Mr. Farrell concurred that a license can not be transferred or assigned; however, he does not feel the First Amendment transfers or assigns the license. She then asked why the Commission was reconsidering the motion to deny the First Amendment.

Commissioner Hansen advised Commissioner Allen that if she was not going to change her original vote to deny the First Amendment, it was senseless to devote any more time to reconsidering the vote. He stated that if she was not going to change her original vote, he would withdraw his motion to reconsider the vote.

Chair Sealock noted that one of the sticking points in approving the First Amendment was the fact that Polk County left out the word "racing", and referred to a gaming license. She wondered why, if it was just an oversight, it couldn't be corrected.

Tom Flynn, legal counsel for RACI, advised that the matter could be addressed and changed. He stated that particular provision has been lost in the ongoing process of determining whether or not the Lease, with any of its terms, was going to be approved by the Commission. Mr. Flynn stated that Polk County has taken the position that there is no Lease without the First Amendment. He clarified that the First Amendment provides for the termination of the Lease upon the sale of the property by the landlord and upon a new qualified sponsoring organization successfully obtaining a gaming license from the State of Iowa. RACI would have 15 days to match the offer, which does not start until all other requirements are approved. Mr. Flynn noted there is no provision in current Iowa law that could trigger this amendment. The amendment could only have substance if the Legislature took action to allow for the license to be transferred. He does not feel RACI or Polk County sent any message to the Legislature. The RACI Board felt that if Polk County received a high enough offer, they did not want to be an impediment to the transfer if the Polk County taxpayers could benefit from the sale.

Commissioner White, expressing his observations since the end of the legislative session, stated that he felt there had been a total lack of candor by Polk County and RACI, to some extent, when he brought up the fact that the word "pari-mutuel" had been omitted from the First Amendment. He was advised it was an oversight; however, after reading SF 2320, which talked about the operation of gambling games. In his opinion, this would allow the gambling license to be separate from the racetrack and would allow all types of

gambling games approved by the Commission. He feels this was a planned strategy by the Polk County Board of Supervisors to create a land-based casino in Polk County with blackjack, craps, roulette, and everything that is allowed on a riverboat. Commissioner White stated that he would not support the First Amendment to the Lease.

Commissioner White stated that he shared Commissioner Allen's viewpoint, and did not want to approve this amendment ahead of an legislative action in order to give Polk County and RACI the ability to go to the Legislature indicating that the Commission has approved the transfer or assigning of the license. He indicated that he felt it was unfair of RACI and Polk County to ask the Commission to approve something that the Legislature has not approved. Mr. Flynn stated that he felt the Legislature had sent a message, albeit one vetoed by the Governor, via what they felt was an acceptable bill. Commissioner White pointed out that the Commission has a rule that stating that individuals and entities appearing before the Commission are obligated to give honest answers, to answer questions squarely and right. The Commission does not want to be given misleading facts. He stated that he does not feel Polk County was truthful when he questioned them about the fact that the Amendment did not refer to a pari-mutuel license.

Commissioner Peyton stated that from a practical standpoint, the First Amendment is saying that if there is legislative action enabling another licensee to occupy Prairie Meadows, and if the Commission grants a license, then the present lease would be terminated. He wondered what former licensee would be able to make a lease payment if they didn't have a license. Additionally, he stated that the Polk County Board of Supervisor's insistence with regard to this Amendment puzzles him. Should the Legislature allow the transfer of the license, and the Commission grant a license to a new party, he wondered how RACI would make any payments under the Lease. They would immediately be in default, and could be expelled from the property for reasons other than the First Amendment. Commissioner Peyton stated that the First Amendment perpetuates the fiction that Polk County has the right to peddle the license. He does not feel the Commission, nor the people of Iowa, are served by the perpetuation of myth that there is something more than the real estate to sell. Commissioner Peyton stated that he does not feel any Commission would approve a Lease that would allow its licensee to be expelled from the property whenever the owner of property determines they would like to have a different licensee. He feels RACI and Polk County should accept the Lease that all parties agreed to at the conclusion of the contested case hearing. He stated that he feels the Commission is the victim of a bait-and-switch in which Polk County and RACI are telling the Commission they will not accept the Lease unless the Commission accepts the new provision.

Mr. Flynn stated that RACI's concern is that without the Lease, the parties go back to operating under the Operating Agreement in which Polk County has the right to terminate RACI's possession of the facilities with thirty days' notice. Commissioner White asked Mr. Flynn why he kept making that statement. He noted that RACI's license is contingent upon the Lease approved by the Commission. If Polk County wants to put the license in jeopardy, it is their responsibility to inform the Commission that there is not a valid Lease between RACI and Polk County. He stated that he was of the understanding

that Polk County was performing under all aspects of the Lease as approved by the Commission.

Commissioner Hansen stated that if there was no interest in changing the original vote, he would withdraw his Motion to Reconsider and accept Commissioner White's recommendation for a change of venue. There was a brief discussion regarding motion protocol.

Chair Sealock moved to the Rules being presented under Notice of Intended Action. Chair Sealock noted that a Commissioner proposed the rules, with some input by one other Commissioner. The other three Commissioners were not consulted, nor was the Administrator. At this time, she offered representatives from the Legislature, as well as other individuals, the opportunity to address the proposed rules.

Senator Michael Gronstal advised the Commission that many in the Legislators, both Republican and Democratic have expressed surprise, dismay and outrage that the Commission would attempt to rewrite legislation through the Administrative Rules process.

Dick Thornton, representing the legislative process – not as a lobbyist or on behalf of any licensee, stated that he had mailed Professor Arthur Bonfield at the University of Iowa Law School, the rules, law and the legislation vetoed by the Governor. Professor Bonfield, author of the APA, stated that the power to do what this session of the Legislature tried to do must be absolute, not a mere scintilla of evidence, a thin thread of evidence running through the process. Professor Bonfield's definition of absolute is "beyond a reasonable doubt". He feels the power must be absolute, and that it does not exist in relationship to the proposed rules. Mr. Thornton stated there is a bait-and-switch tactic being used by the Commission to attempt to accomplish what could not be accomplished by the legislative process by the passage of rules.

Jerry Crawford, legal counsel for the Iowa Greyhound Association, stated that he felt the impetus behind the drafting of the rules was not directed at the greyhound racing industry. He noted that 491-5.1(5) regarding the limitation on location and number of racetracks and number of slot machines and gambling games at racetrack enclosures, if adopted, could do significant damage to the greyhound industry in Iowa. The original concept in the granting of greyhound licenses was that there would be two year-round greyhound-racing circuits – one in Council Bluffs and the other would alternate between the Dubuque and Waterloo greyhound tracks. In view of that intent, the proposed Benton County project, or any other eastern Iowa site for greyhound racing and gaming that would operate six months opposite the Dubuque season, would not represent an expansion of racing or gaming in Iowa, but would simply be fulfilling the original intention when people made investments on behalf of themselves and their families in this industry. Another eastern Iowa track would provide significant economic benefit to Iowa. He noted that a vote for this rule would be a vote against the greyhound industry and a vote for the gaming operation in Tama.

Mr. Crawford stated that the IGA greatly appreciated the help from the Legislature and Commission in increasing the purses with an eye toward increasing the quality of greyhounds. He noted that some of the best dogs in the country are racing in Iowa, the purses are among the best in the nation, and the quality of the breeding stock is skyrocketing.

Mr. Crawford, on behalf of the IGA, asked for the opportunity to bring a proposal before the Commission at a later date for a second eastern Iowa greyhound track to determine if there is sufficient interest. He encouraged the Commission to defeat, amend or defer their consideration of this particular rule.

Chuck DeVos, from Osceola, Iowa, stated that over the last three years he has read various reports indicating that the Legislature has been hesitant to put any type of moratorium on gambling as they felt it was the Commission's responsibility. The Commission has hesitated to do so because they didn't want to legislate. In his opinion, the Legislature's attempt at putting a moratorium on gambling was a poor attempt. He felt it was an attempt by those in power to ensure expansion opportunities rather than limiting it. Mr. DeVos stated the gambling issue is not about horses, dogs, or providing places of employment, this issue about Iowans who have the opportunity to lose millions of dollars every year. Gambling ravages people's lives. He stated the rules don't take anything way, but indicate the people of Iowa don't want any more gambling. Mr. DeVos encouraged the Commission to support the rules.

Bob Farinella, General Manager of Prairie Meadows Racetrack & Casino (PMR&C), addressed the proposed rules on ATMs. Mr. Farinella stated that the industry has been proactive over the last year, addressing the placement of the equipment and has agreed to relocate the equipment away from the gaming equipment. He noted that the ATMs at PMR&C have been moved to non-gaming areas. He questioned how the proposed wording would affect racetrack enclosures, and the industry's proactive stance in encouraging a cooling-off period by moving the ATM machines.

Carlos Jayne, lobbyist for the United Methodist Church, stated that he had encouraged the Governor to sign the moratorium bill, as he is not sure this process will hold up. He encouraged to proceed since the Governor vetoed the moratorium bill, and make it as tough as possible.

Chair Sealock informed those in attendance that Joe Royce, legal counsel for the Administrative Rules Review Committee, had advised Mr. Ketterer that if the proposed rules were passed at this Commission meeting, they would be published on June 17th, a public hearing would be held on July 7th, the Administrative Rules Review Committee would review them on July 14th, and the Commission could not take final action regarding the rules prior to July 22nd, 35 days after they are published. At that time, the Commission would have two options:

- Final adopt the rules at the August 20th Commission meeting, the rules would be published September 9th, and become effective October 14th

- The Commission could hold a special telephonic meeting on July 22nd to final adopt the rules, which would then be published on August 12th and become effective September 16th.

Chair Sealock noted that a special meeting between July 22nd and August 20th would result in an effective date between September 16th and October 14th.

Chair Sealock noted that the Commission has been talking about saturation in the state since 1995, and the majority of the Commissioners serving since that time have made statements indicating they felt there was enough gaming in Iowa. She noted that the Commission has the ability to deny a license. She noted that if these rules do not pass, there are rules in place for the regulation of the gaming industry. Chair Sealock stated that she resented the fact that three of the Commissioners did not have the opportunity to discuss portions of this proposal prior to it coming before the public. She stated that she did not want the Commission's questions or comments be classified, clustered or grouped as anti- or pro-gaming. She noted that the Commissioners will have to use the public forum as an informational opportunity, and asked that the Commissioners be allowed to discuss the proposed rules without being judged by the questions they ask.

At this time, Chair Sealock called on Commissioner White to explain the proposed rules. Commissioner White stated that he feels being on the Commission is a public trust that has been given to them for a period time, and that the public trust should be protected. He feels the Commission needs to be viewed as "tough" by Iowans, that they will enforce the rules, and not be subject to the type of political pressure the Legislature might be subjected to. He stated that each Commissioner needed to be willing to devote the time necessary to protect the ability of the Commission to function. Commissioner White stated that in other states where there is a Commission that is active, denying things and causing trouble for the gambling industry, the industry goes to the Legislature and attempts to rein in the Commission. He stated that he reviewed SF 2320, after it was placed in a separate bill from the appropriations bill, looking for evidence of influence on the Legislature by the people who would restrict the Commission. He found what he was looking for in the underage gambling portion of the bill, which the Commission's ability to fine casinos for underage gambling. SF 2320 was changed from an appropriations bill, which would allow the Governor to veto specific portions, to its own bill, which would either have to be approved or vetoed. In his opinion, SF 2320 could not become law as it would establish a precedent of the Legislature reacting to political pressure to restrict the Commission's ability to fine casinos for underage gambling violations. He felt this provision alone was sufficient reason for the bill to be vetoed.

Commissioner White stated that when the Legislature reconvenes, he hopes the state has a Governor who will take similar action, that if the Legislature proposes something that would restrict the authority or ability of the Commission to regulate gambling in Iowa, that the Governor would veto the bill. He stated that it is counter-productive to have a Legislature create a Gaming Commission and then pass legislation to place restrictions on the Commission's ability to function.

Commissioner White stated that people in the gambling industry have told him that they promote responsible gambling; but statistics show that casinos rely on a small group of people who are pathological or problem gamblers. He noted that SF 2320 stated "A licensee shall not permit the operation of a satellite terminal as defined in Section 527.2 to dispense cash or credit for gambling purposes." He wondered who was going to stand by the ATM machines to determine how the money was going to be used. The bill didn't ban the dispensing of cash or credit except for gambling purposes. Commissioner White stated that this provision, if the bill were enacted, would create enforcement problems for the Commission.

Taking the above provisions into account, understanding Governor Branstad's concerns about the proposed bill and his possible veto, knowing there was a upcoming Commission meeting and that Friday, May 22nd was the last day for the Governor to act on the bill, Commissioner White stated that if the people of Iowa had advised their legislator that they wanted a moratorium on gambling in Iowa, then the Commission should not leave a gap. The Commission can do their job to represent the citizens of Iowa by proposing the rules he has put before the Commission today.

Commissioner White reiterated that the Notice of Intended Action is the initiation of the rules process. The Legislature, through the Legislative Rules Review Committee, has oversight, and certain options available to them. The public will have input. Eventually the rules will come back before the Commission.

Commissioner White stated that the Legislature gave the Commission the authority to determine the number and location of racetracks and riverboats and to adopt administrative rules to enforce their authority under the gambling law. He stated that he tried to adapt what the Legislature did in his proposed rules. Commissioner White noted that the administrative rules are subject to the vote of three Commissioners. Whatever this Commission decides to do can be changed by a future Commission. He stated that he did not include a specific time frame with regard to the moratorium because he didn't want a future Commission to feel the rules had to be in place for a specific length of time. The proposed rules would limit the number of riverboat licenses to the ten already granted, but would allow the boats to move around within the county, be sold and relicensed. The rules do not prohibit counties from passing referendums.

Commissioner White stated that if Iowa is going to have a slow-down on licenses, he doesn't feel it is right to allow existing casinos to continue to expand and increase their market share. This would just allow the existing casinos to create a monopoly, and they would have to expand their marketing area further to increase their customer base.

With regard to the satellite terminals and ATM machines, Commissioner White noted there are other ways to obtain cash at a casino other than an ATM. He stated that at least on the riverboats the machines could be located away from the casino. The Commission does define a "racetrack enclosure", but feels the definition does not include the whole facility. He feels very strongly that there needs to be a "cooling off period".

Commissioner White stated that he felt the Commission needed to act on this issue quickly, and did not have time to establish a committee or have a special meeting. He stated that he tried to follow the Legislation as honestly as he could, except for the ATM machine issue, which he expanded. He reiterated that he believes it is within the Commission's authority to adopt all of the proposed rules

Commissioner Sealock advised the Commission members that they had some options with regard to the proposed rules - that Commissioner White was not going to hold them to an up or down vote on the entire set of proposed rules. They could vote on each section individually, defer a specific section or all of them, re-work them and have them on the agenda next month.

Commissioner Peyton stated that in order to consider Professor Bonfield's position properly, he would like to have him appear before the Commission. He feels the statute that allows the Commission to do its job is absolute. He noted that the statute states that the Commission shall decide the number, location and type of excursion gambling boats. He feels that is pretty absolute. Commissioner Peyton stated that question for him on this issue is not whether they have the authority to establish the rules, but whether they should do it. Noting that he has been involved in this debate for three years, another questions is why these particular rules be of special interest at this point in time. He set forth the following reasons:

- He has previously been opposed to setting numbers previously because when the Commission was dealing with these issues, there were outstanding referendums, Osceola had passed a referendum and had at least one or several applications for licenses, the Waterloo situation, and a number of different license applications. He felt it would be cynical to shut the door on these entities. In his opinion, the market process would sort out the qualified candidates from the unqualified candidates. Commissioner Peyton noted that two communities had defeated referendums, and that the state is trending away from additional gambling. Following the granting of the Osceola license, there was talk of setting the number of licenses. At that time, the Commission was aware the Governor had proposed legislation, as well as a number of competing bills floating around. At that time, he felt it was appropriate to let the Legislature take the first shot at a moratorium bill. Commissioner Peyton stated that he did not intend any disrespect to the Legislature by his support of the proposed rules. He stated that he was not being judgmental or sanctimonious in any respect, but that he did not feel the Legislative process was particularly well suited to setting limits and numbers of games. He feels the Legislature understood that when they passed the first gambling bill, and that is why they gave the micromanaging of the industry to the Commission.

Commissioner Peyton spoke to the proposed ATM rule. He noted there had been several comments that it was too broad or not broad enough. He noted that within the last year or two, someone from the gaming industry informed the Commission that they recognized the problem compulsive gambling is causing in the state, and they were willing to deal

with it, leaving the impression that the industry was willing to impose its own restrictions. He recognized it as a public relations move on the part of the gaming industry, but also felt it was a very responsible step for them to take. However, at some point, the issue got sidetracked and ended up in the Legislative process. Noting that these rules are only being submitted under a Notice of Intended Action, Commissioner Peyton stated that the Commission has the opportunity to be proactive and involve gaming industry people in crafting something that is significant and recognizes compulsive gambling problems in the state - particularly with the extension of credit within casino walls. He feels that the Commission is obligated to impose some tough restrictions. He encouraged the industry to make constructive suggestions of how this particular rule can be improved and benefit everyone.

Commissioner Allen expressed her concern with the underage gambling portion of the legislation just vetoed by the Governor. Under the bill, the maximum a licensee could have been fined would have been $1,000 if the licensee discovered the infraction and escorted the violator off the boat. She noted that $1,000 to the gaming industry was not a large amount. Commissioner Allen noted that the bill limited the Commission's ability to sanction a licensee whose facility was frequented by a habitual violator. The legislation would have allowed no latitude for flagrant violations. She noted that the proposed rules are not perfect, but if they are passed, there is another step. Commissioner Allen stated that the Legislature has capped the gaming tax on one side of the industry, but has allowed it to continue to escalate on the other side. She suggested the Legislature should look at this issue with help from the industry.

Commissioner Allen noted that another way to limit the number of licenses in the state is via the required referendum. Currently, a referendum only requires a majority vote in order to pass. She suggested that in the future, perhaps a 60% vote could be required in order for a referendum to pass.

Chair Sealock stated there is nothing in the proposed rules that the Commission does not already have the authority to do. If the rules are passed, the Commission will no longer have the ability to look at each individual situation on its own merit and make a decision regarding that venue. She stated that if these rules were not passed, the Commission would not be left without any regulatory authority. Chair Sealock stated that she agreed with several of the proposed rules, but was troubled by the ATM rule. She noted that she uses her ATM card to access her checking account instead of writing checks, and does not like to carry large sums of money. She expressed concern over the racetrack enclosure provisions due to safety concerns for the individuals using their ATM cards.

Chair Sealock referred to the proposed rule, which stated that a licensee shall not increase the number of gambling games or slot machines. She wondered if that included simulcasting. Additionally, with the way the proposed rule is written, she wondered if it would prevent licensees from adding other simulcasting venues other than those already in approved. She feels the rule micromanages how the licensee operates - that it does not allow the licensee the flexibility to remove table games and add slot machines or vice versa.

Chair Sealock stated that she did not have too many problems with the proposed legislation, except that she felt all five Commissioners were unhappy with the Legislature's attempt to restrict the Commission's ability to make the "fine fit the crime" with regard to underage gambling violations.

Commissioner Hansen stated that while he respects Commissioner White's ability, he is deeply disturbed by the proposed rules. He feels the rules have been crafted as a dangerous detour that destroys the constitutional concept of the three branches of government. He noted that during the time he was in the Legislature, he participated in the enactment of the legislative rules review process.

Commissioner Hansen stated that he agreed with Commissioner Peyton's comment that the Commission has the authority to establish the number of licenses and machines, but SF 2320 reclaimed both of those rights and gave them back to the Legislative chamber.

Commissioner Hansen explained that it is the Legislature who passes laws that are skeletons, and the various agencies institute rules of interpretation and implementation, but have to work within the confines of the legislative law. With the veto of SF 2320, there is no new legislation and no new rules to write. In his opinion, there is a new shadow branch of the government claiming stature without a statute that has twisted and tainted this Legislative intent, and engaged in Legislative malpractice by virtue of selective surgery and improvised implants. Commissioner Hansen noted there were approximately nine sections of SF 2320 that had been discarded in the proposed rules. Among them are the violations by under-aged gamblers, the specific horse purse, and the transfer of collective bargaining agreements. He feels there have been some radical distortions of the Legislature's actions. The proposed rules have removed the ATM machines off the riverboats and out of the track, stretched a two-year machine limit to forever, and lengthened a five-year moratorium to eternity.

Commissioner Hansen stated that if the Commission passes these rules, they would be setting a terrible precedent that would crumble the whole Legislative Branch while elevating the Executive Branch to a state of disproportionate dictatorship. He stated that passing these rules would be a stain on the Commission's record, that it is an attempt by the Commission to destroy and dislodge the legislative process.

Commissioner Hansen stated that he hoped the other Commissioners would oppose the proposed rules, and recommended that the Legislature reconvene and either override the Governor's veto of SF 2320 or abolish gambling.

Chair Sealock called for a motion. Commissioner Peyton stated that he wanted to take issue with some of the analogies used by Commissioner Hansen. He referred to Commissioner Hansen's comment that the Legislature took back the Commission's authority to establish the number of licenses and machines. He noted this would have been true if SF 2320 had been signed into law. The Commission has specific legislative authority to act on the issues addressed by the proposed rules. He noted that SF 2320 allowed the Commission to determine where ATM machines could be placed.

Commissioner Peyton reiterated his earlier statement that he believes the Commission had the authority to pass these rules, but the question is whether they should.

Chair Sealock again called for a motion. Commissioner Peyton moved to approve Item 4A(1)- Amend rule 491-1.6 by adding new subrule - of the Notice of Intended Action rules. Commissioner White seconded the motion. Hearing no additional comments, Chair Sealock requested a roll call vote. The motion carried on a 3-2 vote, Chair Sealock and Commissioner Hansen voting no. (See Order No. 98-74) (Agenda attached)

Chair Sealock called for a motion regarding Item 2 under Notice of Intended Action on Rules. Commissioner Peyton moved to approve Item 4A(2) under Notice of Intended Action - Amend 491-5.1(99D) by adding new subrule. Commissioner White seconded the motion.

Commissioner Peyton noted that Chair Sealock had asked if this particular rule would prohibit the licensees from simulcasting. Noting that it was not a formal legal opinion, Commissioner Peyton referred Chair Sealock to 99F.1(10), which defines gambling games. It is his opinion that refers strictly to the gambling games authorized by the Commission and would not include simulcasting. Commissioner White noted that gambling games refers to a game of chance. Mr. Ketterer suggested that Commissioner White consider changing the words "gambling games" to "gaming positions" as the definition of gambling games includes slot machines.

Commissioner White noted that by definition, a gambling game is any game of chance authorized by the Commission, but does not include pari-mutuel or simulcast. The statute states that for a racetrack enclosure, gambling games does not include table games of chance or video machines. Commissioner White explained that when he used gambling games in the rule for the racetrack enclosure, he is incorporating the statutory definition of gambling games as it pertains to a racetrack enclosure. Mr. Ketterer advised Commissioner White that he had used the same language in the riverboat section, which would prevent a riverboat licensee from switching around the number of table games and slot machines offered.

Mr. Ketterer advised the Commissioners that the SF 2320 did not include the pari-mutuel license, only the gaming license in the transfer language. The proposed rules indicate that a new license may be issued for operation in the same county. He stated that would have to a new pari-mutuel license, that there could not be a new gaming license because of the restriction to licensees as of January 1, 1994. Commissioner White concurred that any new license for a racetrack in Polk County would not be able to have slot machines.

Chair Sealock called for a roll call vote. The motion carried on a 3-2 vote, Chair Sealock and Commissioner Hansen voting no. (See Order No. 98-75)

Chair Sealock called for a motion with regard to Item 4A(3) - Amend Chapter 20 by adding new rule. Commissioner Peyton moved to adopt Item 4A(3). Commissioner White seconded the motion. Mr. Ketterer again recommended that the words "gaming

positions" be substituted for "gambling games" and then add a definition for gaming position.

Hearing no further discussion, Chair Sealock requested a roll call vote. The motion carried on a 3-2 vote, Chair Sealock and Commissioner Hansen voting no. (See Order No. 98-76)

Chair Sealock moved to the rules up for final adoption. Chair Sealock called on Mr. Ketterer. Mr. Ketterer advised that Items 1-13 and 15 are items that have been noticed and discussed previously. He recommended the Commission approve those rules. With respect to item 14, Mr. Ketterer noted there may be an amendment to the language, which someone may want to address.

Commissioner White, noting that the Commission issues occupational licenses, asked Mr. Ketterer if the deletion of specific language would limit the Commission to licensing those individuals directly involved with the riverboat gaming or racing. Mr. Ketterer explained that the change was for clarity. Commissioner White stated that on the face of the language change, it appears to restrict the people the Commission would license. Mr. Ketterer explained that the Commission is the one who determines who does and who does not need to be licensed.

Hearing no further discussion, Commissioner Peyton moved to final adopt the rules listed in Item 4B, 1- 13, and 15. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-77) (Agenda attached)

Chair Sealock moved to Item 4B(14). Mr. Ketterer explained that Item 14 had to with possession of firearms within a casino. The language did read "No patron or employee of the licensee, including Security Department members, shall possess or be permitted to possess any pistol or firearm within a casino without the express written approval of the administrator." He noted there is some proposed language from the Department of Public Safety.

Verne Schroeder, lobbyist for the Chiefs of Police and Iowa Police Association, stated he wanted to make sure that any time an officer needs clearance that the local authorities would have the ability to do so when necessary. He feels the proposed change is much better than previous language, and asked that the Commission approve the change.

Gene Meyer, head of the Gaming Unit for the Division of Criminal Investigation, indicated that Mr. Schroeder had brought his concerns to the attention of the Commissioner of Public Safety. Mr. Meyer drafted a proposed change clarifying the position of Public Safety and Commission staff, identifying the only exceptions to the firearm rule. Commissioner Peyton asked what constituted a "peace officer", and if it included a federal agent, IRS agents, or a member of the bureau. Mr. Meyer indicated that the term would include all of the above.

Mr. Farinella stated that under Iowa statute they are required to have an individual on premise with arrest powers at all times. PMR&C employs off-duty police officers in uniform as part of their security force to meet that particular requirement. He asked if PMR&C would be required to obtain permission for those individuals to enter the casino with their firearm. He reiterated that when the officers are on property, they are employees of PMR&C. Commissioner White indicated he felt the rule called for the approval of the individual rather than each instance of entering the casino.

Commissioner Peyton moved to approve the adoption of agenda Item 4B(14) as amended. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-78)

Chair Sealock moved to the next agenda item, Compliance with Rule 491-20.11(6)(a)(3) – Qualified Sponsoring Organizations Required to Establish Written Procedure concerning Avoidance of Conflict of Interest when determining Distributions. Jerry Mathiason, Associate Director of Iowa West Racing Association, advised the Commission the IWRA Board had passed the amended Conflict of Interest Policy on April 21st, and that it had been submitted for the Commission's approval.

Commissioner Peyton asked Mr. Mathiason if an individual was allowed to serve on the board if they did not sign the Pledge. Mr. Mathiason stated that if an individual does not fulfill the regulations set by IRGC, they are not allowed to serve.

Commissioner White asked Mr. Mathiason about the term "any related matter" in No. 8 of the Pledge. Mr. Mathiason explained the Board was trying to expand the areas in which a Board member would have to disclose their involvement beyond board service. Commissioner White advised that instead of "i.e.: grants", IWRA should have used "e.g.". Mr. Mathiason stated that IWRA would make that change to the Board Pledge.

Commissioner White moved to approve IWRA's Board Pledge subject to changing "i.e." to "e.g.", and filing proof of same with the Commission. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 98-79)

Mr. Mathiason advised the Commission that IWRA's Board had reviewed 130 grant applications the previous evening, and that the policy worked very well. He stated they hope to announce the grant awards by June 15th.

Commissioner White asked Mr. Mathiason if IRWA had publicized the policy changes being made with regard to the grant process so organizations that may have been discouraged about applying would consider filing another application. Mr. Mathiason stated that IWRA had met with the public relation staff from the three casinos, put together a plan, and got the information out. They also intend to review the criteria required to apply for a grant and make sure that it is updated.

Chair Sealock called on Harveys Casino Hotel regarding their contract with Andersen Construction, which had been deferred from the April 17, 1998 Commission meeting.

Art Hill, Comptroller, and Verne Welch, General Manager, were available to answer any questions. It was noted that Mr. Andersen had tendered his resignation from the IWRA Board at the April meeting, and was effective at the May meeting.

Hearing no discussion concerning the contract, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contract as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-80)

Chair Sealock called on Mississippi Belle II (MB II) regarding the contracts submitted for approval. Ken Bonnet, President of MB II, submitted the following contracts for Commission approval:

- Awesome Rental – Supplies, Small Equipment, Storage Space, Equipment Rental for 1998 (Deferred – April 17, 1998) (RP)
- K & K Broadcasting, Inc. – Radio Advertising for 1997 and 1998
- Request for Authorization to Add 20 Slot Machines
  - Anchor Games – Lease of 2 Slot Machines
  - Williams Gaming, Inc. – 12 Video Poker Machines
- Anchor Games – Change in Current Contract on Rental of Wheel of Gold Games
- Gemaco Playing Card Co. – Purchase of Playing Cards
- Per Mar Security Services – Surveillance Equipment

Commissioner White asked if the slot machines were going to be new machines or replacement machines. Mr. Bonnet stated that if they were not given authorization to purchase 20 additional machines, then they would like to be authorized to purchase them as replacement machines.

Commissioner White moved to approve the contracts as submitted except for the contracts with Anchor Games and Williams Gaming, with those being approved for use as replacement machines. Commissioner Peyton seconded the motion.

Chair Sealock pointed out to Commissioner White that he was treating MB II differently from the other riverboats. Commissioner Peyton noted that additional information such as market studies had been received from other boats requesting additional machines. Mr. Ketterer noted that some of those boats had been requesting approval to purchase a substantially larger number of machines.

Commissioner Peyton moved to amend the motion by eliminating the portion dealing with the slot machines, and requested that it be dealt with separately. Commissioner Hansen seconded the motion.

Chair Sealock called for a vote on the original motion dealing with all of the contracts except for the slot machines. The motion carried unanimously. (See Order No. 98-81)

Chair Sealock returned to the contract for the additional slot machines. Commissioner Peyton stated that there is a difference in adding a few slot machines in existing space versus a major renovation. He indicated that he would be in favor of a rule preventing that from occurring, but noted such a rule does not currently exist. Commissioner Peyton stated that he would be opposed to the addition if MB II was replacing the vessel with a larger boat or adding another deck.

Commissioner Peyton moved to approve the contracts with Anchor Games and Williams Gaming for 20 additional slot machines. Commissioner Hansen seconded the motion. The motion carried on a 4-1 vote, Commissioner Allen voting no. (See Order No. 98-82)

Chair Sealock called on Lady Luck Bettendorf. Curt Beason, legal counsel, presented the following contracts for Commission approval:

- AT&T – Lucent D3S PBX System, AS400 Upgrade and Micros Equipment
- BA Merchant Services, Inc. – Quasi Cash Service Agreement
- ComTech Security, L.L.C. – Upgrade of Current Surveillance System
- VLC – 20 Gaming Devices (Part of expansion authorized in April)

Commissioner White moved to approve the contracts as submitted by Lady Luck Bettendorf. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-83)

Chair Sealock called on Catfish Bend Casinos (CBC). Dan Kehl, General Manager of CBC, presented a contract with GEMACO for 60,000 decks of playing cards.

Hearing no discussion, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contract as submitted. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-84)

Chair Sealock called on The President. Mark Lohman, General Manager of The President, and Mary Ellen Chamberlin, President of Riverboat Development Authority, presented a contract to extend the Operator's Agreement between Riverboat Development Authority and The Connelly Group, L.P. through February 28, 2002.

Hearing no discussion, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contract as submitted by The President. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-85)

Chair Sealock called on Southern Iowa Gaming. Larry Seckington, legal counsel, presented a contract with First Saylor Realty/Better Homes & Gardens – Exclusive Retainer Agreement to locate Real Property.

Commissioner Peyton noted that the Commission had been advised at the April meeting that a contract had already been executed with First Saylor Realty; however, the date on

the contract before the Commission is dated May 6, 1998. He wondered if a new contract had been executed, or if the old contract had never been executed. Mr. Seckington stated he had copies of the contract in his file, but did not have one with Ms. Saylor's signature. He noted this is the same contract; that it had not been extended. He stated that the contract commenced May 21, 1997, and terminated on May 20, 1998.

Commissioner Allen asked Mr. Seckington if the contract had been submitted with the original application as part of Exhibit 9. Mr. Seckington stated that he thought it was, but was unable to locate a copy of the contract in his copy of the application. Chair Sealock and Commissioner Allen stated that they had located a copy of the contract in their copies of the application.

Commissioner Allen moved to approve the contract with First Saylor Realty/Better Homes & Gardens as submitted by Southern Iowa Gaming. Commissioner Hansen seconded the motion. The motion carried on a 4-1 vote, Commissioner Peyton voting no. (See Order No. 98-86)

Commissioner Hansen expressed concern about the lack of progress or activity at the Osceola location. He also noted Bill Grace's involvement with the Woodlands track in Kansas, and the problem with the "boat in the moat" ruling in Missouri. He asked how all of the projects are affecting the Osceola project. Mr. Seckington advised the Commission that money for the Woodlands track had been committed three years ago and has no impact on the financing for the Osceola project. He noted that two other projects, the "boat in the moat" and an Indian casino, became very active right after the Iowa Legislature adjourned. Mr. Seckington advised that the "boat in the moat" case had been resolved and they would be opening their expanded St. Jo facility on Friday evening, and that the Indian casino had opened on Wednesday evening.

Mr. Seckington stated that Mr. Grace had advised him that he intended to have construction underway within 60 days. They intend to have engineering contracts before the Commission for approval at the June meeting, as well as naval architect contract. He noted that the architects have virtually completed the work on the land-based design.

Commissioner Hansen asked if there were any annexations that had to take place. Mr. Seckington indicated there were.

Chair Sealock called on Dubuque Diamond Jo (DDJ). Doug Gross, legal counsel for DDJ, presented a contract with Wasserstein Perella & Co., Inc. to act as a financial advisor with respect to a possible sale of the company. Mr. Gross advised the Commission that unitholders have expressed interest in selling the assets of the company. They have had one offer, and significant expressions of interest, but have not been able to muster sufficient votes to approve the sale. They felt it was prudent to have an outside financial advisor to pursue the options. Mr. Gross noted that he has been working with Mr. Ketterer and Mr. Farrell on ways to deal with the Alfredo litigation. He noted that in order for the firm to receive any fees beyond the initial retainer, they would have to actually consummate a sale, which would require Commission approval.

Mr. Ketterer confirmed that IRGC staff had been working with Mr. Gross on resolving the Alfredo litigation issues. He noted they are close to reaching an agreement, but would like to make the approval of the agreement conditional upon the resolution of the Alfredo issues.

After further discussion, all parties agreed that Greater Dubuque Riverboat Company (GDREC) could pay the retainer to Wasserstein Perella & Co., Inc., but would not pay any additional funds until a final purchase agreement has been approved by the unitholders of GDREC and the Commission. It was determined the condition on the approval was not needed.

Hearing no further discussion, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contract as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-87)

Chair Sealock called on Ameristar Casino. Jeff Terp, Vice President of Business Development for Ameristar, presented the following contracts for Commission approval:

- Alegent Health – Employee Drug Screening
- Ecolab, Inc. – Cleaning Supplies (Addendum)
- Hawkeye Food Systems – Food Supplies (Addendum)
- Jacobsen Fish Co., Inc. – Fresh Fish and Seafood (Addendum)
- Lanoha Nurseries, Inc. – Ground Maintenance Work (Addendum)
- Lincoln Poultry – Poultry and Specially Prepared Foods (Addendum)
- Monfort, Inc. – Pre-Cooked Beef an Condiments (Addendum)
- Omaha Steaks – Beef and Processed Foods (Addendum)
- P.A. Braunger – Various Food Supplies (Addendum)
- South Side Press – Printing Services (Addendum)
- Superior Coffee and Foods – Coffee Supplier
- Unisource – Paper Products (Addendum)
- W.W. Grainger, Inc. – Miscellaneous Supplies (Addendum)

Hearing no discussion, Chair Sealock called for a motion. Commissioner Allen moved to approve the contracts as submitted by Ameristar Casino. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 98-88)

Chair Sealock called on PMR&C. Tom Timmons, Vice President of Operations, presented the following contracts for Commission approval:

- 1998 Employment Agreements
  - Robert Farinella
  - Thomas Timmons
  - Gary Palmer

- Contract Approvals
  - American Quarter Horse Association – Purse Supplement for Quarter Horse Stakes Program
  - Audiovisual Inc. – Potential Vendor of Television Equipment to Enhance Patron Satisfaction of Horse Racing Activities
  - Becker Equipment – Potential Supplier of Food Service Equipment & Services
  - Bolton & Hay Inc. – Potential Supplier of Food Service Equipment & Services
  - Brissman Kennedy – Potential Supplier of Food Service Equipment and Services
  - Business Publication – Advertising in Smaller Publications such as City View and Business Record
  - Coca Cola USA – Sole Provider of Various Coca Cola Products
  - Competitive Edge – Potential Supplier of Advertising Specialty Items for Marketing Promotions
  - Denis Della Vedova Inc. – Construction of Dormitories and Trailer Parking Lot
  - Joe Finn Construction – Potential Supplier of Concrete Construction Services
  - Mosler Inc. – Potential Vendor for the Purchase and Service of Money Handling Machines
  - NDC Check Services – Check Cashing Services
  - Per Mar Security – Service Agreement and Provider of Equipment for Surveillance Department
  - Pro Line Co. Inc. – Potential Provider of Construction Services
  - Spintek – Spintek Accusystem (Hopper Fill System)
  - Taylor Industries, Inc. – Potential Supplier of Food Service Equipment and Services

Commissioner Allen asked Mr. Timmons if the contract with Business Publication would be in addition to other advertising contracts already approved. Mr. Timmons indicated in the affirmative.

Mr. Ketterer advised the Commission that PMR&C has always submitted the employment contracts of Mr. Farinella and Mr. Timmons for Commission approval, and have added Mr. Palmer this year. He noted that the Commission has never reviewed any of the licensees' employment contracts. Management agreements have been reviewed. Mr. Ketterer stated that he felt the agreements were a matter of public record if a matter of concern arose.

There was a brief discussion concerning the contract with NDC Check Services. Hearing no further discussion, Chair Sealock called for a motion. Commissioner Allen moved to approve the contracts as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-89)

Commissioner Peyton asked Mr. Timmons how the new grant process is working. Mr. Timmons called on Gary Palmer to answer the question. Mr. Palmer advised that the RACI Board had been expanded to 18 member – 14 within Polk County and 4 from outside, 1 from each contiguous county to Polk County. He noted that $4.5 million had been budgeted for grants in the first half of the year, and that approximately $2.25 has been granted. RACI has awarded half of those funds to date. Mr. Palmer stated that RACI has started personally presenting the checks to the grant recipients.

Commissioner Peyton asked if the entire $4.5 million was available for distribution. Mr. Palmer stated that was the figure they were using in determining the grants. They will have two grant distributions – one in the spring and another in the fall.

Mr. Palmer advised the Commission that RACI had teamed up with the Iowa Department of Economic Development and have made matching grant distributions to 60 Iowa communities to date this year. He estimated that between 20-25% of the funds go outside of Polk County.

Commissioner Peyton noted that the Commission has an Order in place requiring a diligent effort to give a substantial amount back to the community. He suggested that if funds in excess of $4.5 million are available, they should be given to the community.

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

- Anchor Games – Wheel of Gold-style Slot Machine (Change in Contract Terms)
- International Assoc. of Machinists & Aerospace Workers – Labor Agreement Addendum Including Back Wages
- American Trust and Savings Bank – Bank Loan Repayment

Hearing no discussion concerning the contracts, Chair Sealock called for a motion. Commissioner Peyton moved to approve the contracts as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-90)

Mr. Wentworth introduced Bill Hart from Kansas City, who has accepted the position of Slot Director at DGP&C.

Chair Sealock called on Bluffs Run Casino (BRC). Doug Okuniwicz, Director of Operations, presented a contract with McLeod USA for local and long distance telephone service for Commission approval.

Hearing no discussion, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contract as submitted by BRC. Commissioner Peyton seconded the motion, which carried unanimously. (See Order No. 98-91)

Chair Sealock called on Mr. Ketterer to address the hearing for the Belle of Sioux City, L.P. for violation of Iowa code Section 99F.9 (Wagering – Age Restrictions). Mr. Ketterer advised the Commission that the hearing had been resolved through a Stipulation agreed to by John Pavone, General Manager of the Belle of Sioux City, and IRGC. The Stipulation levies a $10,000 administrative penalty against BSC.

Mr. Ketterer stated that an underaged individual was found gambling on the riverboat. It was determined he had been on the boat in excess of 7 hours. It was determined that he was not asked for identification prior to entering the casino. Mr. Ketterer recommended approval of the Stipulation.

Hearing no discussion regarding the Stipulation, Chair Sealock called for a motion. Commissioner Peyton moved to approve the Stipulation. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-92)

Chair Sealock moved on to Administrative Business - the approval of the proposed meeting dates and locations for FY 1999. Commissioners Allen and White expressed a desire to move the meetings on the eastern side of the state from Thursday to Friday. Chair Sealock voiced her preference for Thursday meetings. Commissioner White indicated that he felt the Commission needed to consider whether or not they wanted to continue holding the Wednesday evening dinners. Commissioner Peyton stated that he felt the meetings should continue to be held on Thursday, and was not in favor of moving the meetings on the eastern side to Friday.

Commissioner Peyton noted that he had a conflict with the July 16th Commission meeting. He noted that if the July meeting was pushed back a week to July 23rd, it would allow the Commission to avoid a special meeting for purpose of adopting the rules that were Noticed at this meeting.

Commissioner Peyton moved to adopt the Commission meeting dates and locations, changing the July 1998 meeting to July 23rd. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-93)

As there was no Public Comment, Chair Sealock called for a motion to adjourn. Commissioner Peyton so moved. Commissioner Allen seconded the motion, which carried unanimously. The meeting adjourned at 1:00 P.M.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS
SECRETARY

IOWA RACING AND GAMING COMMISSION
MINUTES
JUNE 18, 1998

The Iowa Racing and Gaming Commission (IRGC) met at 8:30 A.M. on Thursday, June 18, 1998, at Adventureland Inn, I-80 and Highway 65, Altoona, Iowa. Commission members present were Rita Sealock, Chair; and members Bill Hansen, Jacquelyne Allen and Harold White. Vice-Chair Brad Peyton was absent.

Chair Sealock called the meeting to order at 8:30 A.M. and requested a motion to approve the agenda. Mr. Ketterer noted that the agenda had been amended to add two contracts for Prairie Meadows Racetrack & Casino that had inadvertently been left off the original agenda. Commissioner Hansen moved to approve the agenda. Commissioner Allen seconded the motion, which carried unanimously.

Chair Sealock called for a motion regarding the minutes from the May 21, 1998 Commission meeting. Commissioner White stated that he had contacted Professor Bonfield with regard to the proposed rules adopted by the Commission at the May meeting. Professor Bonfield advised Commissioner White that he had not read the proposed rules, nor researched the Commission's ability to adopt such rules. Commissioner White moved to approve the minutes as submitted. Commissioner Hansen seconded the motion, which carried unanimously.

Chair Sealock called on Jack Ketterer, Administrator of the IRGC, to address the rules before the Commission for Final Adoption. Mr. Ketterer stated these rules, addressing the administration of lasix, had been before the Commission under Emergency Adopt and Implement and Notice. These rules are being adopted in an attempt to comply with legislation passed during the recent legislative session. Mr. Ketterer recommended approval.

Commissioner Allen moved to adopt the proposed rules. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-94)

Chair Sealock called on John Hinshaw, Director of the Horse and Dog Breeding Program for the Iowa Department of Agriculture and Land Stewardship. Mr. Hinshaw advised the Commissioners that the Breeders Cup race at the Bluffs Run Casino racetrack would have a purse of between $175,000 and $200,000, which is the highest state-bred stakes purse in the nation. Dubuque Greyhound Park & Casino's purse will be between $120,000 and $130,000, ranking them third or fourth in the nation for a state-bred stakes purse. Mr. Hinshaw noted that some of the breeders in the state are in the process of building larger kennels.

Mr. Hinshaw advised the Commission that from January 1, 1996 to June 30, 1996, 69 greyhound litters were registered with the department, and an additional 119 litters were registered from January 1 to June 30, 1997. During the same time frames, 338 and 442

individual greyhounds, respectively, were registered. He clarified that these numbers did not represent all of the dogs within the state; these figures just represent the dogs that were thought to be going to the tracks. He noted that close to 12,000 greyhounds have been registered with the Department in just less than 14 years. Registrations have leveled off at approximately 800 per year, but the quality of the greyhound has improved.

With regard to the horse racing industry, Mr. Hinshaw advised that the number of new brood mares registered over the last four years has increased as follows:

MARES REGISTERED	1994	1995	1996	1997
Standardbred	13	13	44	59
Quarter Horse	77	161	123	51
Thoroughbred	120	201	415	453

Mr. Hinshaw stated that the quality of the stallions in the state has increased substantially over the last five years. With regard to foal registrations, Mr. Hinshaw advised the Commission that this number could not be accurately determined as only those foals that are going to a track or sale are registered. He noted there are brood mares in 85 counties in the state.

Chair Sealock called on Mr. Ketterer to address the Admission Fees for Fiscal Year 1999. Mr. Ketterer stated that the Iowa Code requires the Commission to collect admission fees from the licensed riverboats to cover the costs of the appropriation to the Commission for riverboat regulation and 65% of the salary and benefits for the DCI agents assigned to the boats. In FY 1999, that amounts to $2,968,807, which is reduced by the annual license fee paid by the riverboats and the occupational license fees collected by the Commission, leaving $2,732,807 to be paid by the licensees. The fee is paid on a weekly basis and will amount to $5,840 per boat.

Commissioner White asked about basing the fee on a per capita basis so that the boats that have fewer admissions would pay a more proportionate share of the costs. Mr. Ketterer explained that the racetracks pay 50 cents per admission. The admission fees are not really relevant to what is required by statute. Instead of looking at the number of admissions, staff looks at the number of DCI employees – each boat has four gaming enforcement officers and two agents so that they are staffed during all hours of operation. The admission fee is based on the cost of regulation.

Hearing no further discussion, Chair Sealock called for a motion. Commissioner Hansen moved to approve the Admission Fee Schedule for FY '99. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-95)

Chair Sealock called on Clinton County Gaming Association (CCGA). Jim McGraw, President, advised the Commission that they had made some changes to the organization's By-laws, which they were submitting for Commission approval.

Hearing no discussion with regard to the changes, Chair Sealock called for a motion. Commissioner Allen moved to approve the changes to the By-laws of CCGA. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-96)

Chair Sealock called on Harveys Casino Hotel to give their presentation regarding expansion plans for the riverboat and land-based facilities. Verne Welch, General Manager, and Art Hill, Controller, gave the presentation. Tom Hanafan, Mayor of Council Bluffs, was also present in the event there were questions regarding the city's position on the proposed expansion. Mr. Welch advised the Commission that the recreation complex had been successfully opened with four soccer fields and baseball diamonds. When the project is completed, there will be eight soccer fields and baseball diamonds.

Mr. Welch stated that the proposed expansion project would include three phases to be completed over an approximate five-year period. The first phase would encompass finishing the third deck of the casino, moving offices currently located on this deck to the lower hold, and a 1,750- space parking garage designed to house offices on the top floor. This would help equalize the weight distribution in order to maintain their current passenger count of 2,350. He noted they are currently authorized to have 1,483 gaming positions. They exceed this every weekend and holiday. The parking garage would be located on the wet side of the property. They have been working with DNR to get the necessary approvals. They hope to begin the parking garage yet this summer.

Phase 2 of the project would be an additional hotel tower and convention center. Their current hotel has been operating at a 95% occupancy rate for the last six months, which affects the Convention Center. During the last six months, Harveys has turned down approximately 80 conventions due to insufficient meeting space and/or hotel rooms. They also use the main convention center for entertainment. The additional convention center, approximately 20,000 sq. ft., would allow them to continue to book various entertainment shows, but also expand their convention space. In the last six months, Harveys has been the site for 214 conventions, of which 183 were from out-of-state. The second phase would also include enclosing the swimming pool.

Toward the end of the five-year period, when the moratorium takes effect, Harveys would possibly be looking at adding a third hotel tower. Mr. Welch showed some aerial views of the property as it would look if the expansion plans were approved. He noted there is also a possibility of adding additional restaurants to the upper level of the parking garage. Mr. Welch advised that the lower level of the parking garage would not be available if flooding occurred.

Mr. Hill noted that the original information provided included information for 1996 and 1997 and actual information for 1998 through April. They provided May information to the Commissioners at the meeting. He noted there has been a 6% increase in the market from 1996 to 1997, another 10% increase through the first four months of 1998, and almost 10% in May 1998 alone. They anticipate the Council Bluffs market will generate

revenues between $290 - $295 million, with continued growth at the rate of 5% per year over the next several years. If the anticipated growth occurs, the market will be $340 million in 2001. Without the expansion, the projected the growth will be at the rate of 2½% per year, reducing the projected market to $316 million. Mr. Hill stated the added facility would add about $24 million, or $2 million per month, to the Council Bluffs gaming market.

Chair Sealock called on Mayor Hanafan for his views on the expansion. Mayor Hanafan stated that he had seen the projections with regard to the proposed addition. He noted that the Council Bluffs area, including Omaha, is the largest metropolitan area in Iowa. He indicated that any convention space or additional hotel rooms would be beneficial to Council Bluffs as they are land-based facilities, which are taxed at the full rate.

Mr. Ketterer asked Mayor Hanafan if Council Bluffs had any statistical information on how much revenue the conventions booked by out-of-state entities generated from December 1996 through May 1998. Mayor Hanafan indicated the Convention and Visitors Bureau would have that information. He stated that the hotels in the area are operating at 97-98% capacity, and that is with the addition of over 1,000 rooms in the last five years. Most facilities are full on the week-ends.

Mr. Hill stated that he sits on the board that spends the hotel occupancy tax money. He noted that in the past, the board looked at granting between $40 - $45,000 per year. In the upcoming years, they anticipate having over $100,000 available for distribution.

Mr. Welch stated that he had spoken with the Convention and Visitors Bureau the previous week. They indicated that the typical conventioneer spends about 2 ½ days in the area and generates approximately $700 for the local economy. Mr. Ketterer asked the average number of attendees at a convention at Harveys. Mr. Welch indicated it would probably be close to 100, but they have had several in the 500-600 range. Mr. Ketterer, using the numbers provided, stated that would generate about $49 million for the local economy.

Mr. Ketterer asked Mr. Welch what the investment for the total project would be. Mr. Welch indicated that it could be between $100 - $130 million, the first two phases would cost about $80 million. Those figures do not include the cost of a new boat, which they would like to do some day, without increasing the number of positions. Coast Guard regulations require that the current vessel will have to go to New Orleans for a hull inspection, at which time a larger vessel could be considered..

Mayor Hanafan advised the Commission that Council Bluffs would be hosting the Iowa League of Cities, which has a membership of 970 cities. They anticipate around 700 delegates, which does not include attending family members. This convention will utilize virtually every hotel room in the city, with Harveys being the host hotel.

Commissioner White noted there are several convention centers in Iowa that are able to attract business without the benefit of gambling. He noted that part of Harveys parking is

under water part of the year, and that they will more than likely build the parking garage with or without the gambling expansion. Mr. Welch agreed with that statement.

Additionally, Commissioner White noted that they have a high occupancy rate at the current hotel facility, and asked what the average occupancy rate would be. Mr. Welch indicated that 70-75% was an acceptable rate, and that Las Vegas has dropped to 86%. Commissioner White asked how their room rates compare with others in the area. Mr. Welch indicated their room rate is $65/day, $49 for casino guests, and their suites run between $100-$140/day.

Commissioner White asked Mr. Welch how much of the proposed project would be done if they were held to the current number of gaming positions. Mr. Welch indicated that would be difficult to determine until a total design price could be established, but feels very strongly that the parking garage would be built. He noted that even with the current expansion of the third deck, they are already out of room and gaming positions to handle the crowds coming to the casino. The revenues from the additional machines would help fund the project. Commissioner White asked Mr. Welch if Harveys would lose money on the second hotel. Mr. Welch stated that would not necessarily be the case; the room base would be diluted, and the additional space is needed to remain competitive in the market. Several of the smaller hotels and motels are expanding in the Council Bluffs area are also expanding, and Ameristar was recently authorized to add approximately 330 slots and 10 table games. Harveys is trying to keep some parity between the two operations.

Commissioner Allen noted that one of the criteria when determining whether or not to grant a riverboat license is the amount of land-based facilities. She asked Mr. Welch if most of the first phase of the project could be done without additional gaming positions. Mr. Welch stated that was up to corporate management, but feels it is necessary to proceed with the parking garage. He indicated that the casino expansion would help pay for other portions of the project. Commissioner Allen asked if the requested gaming positions were restricted to the third deck. Mr. Welch indicated that was correct. He stated that the completion of the renovation of the third deck and the parking are tied together because they intend to use the top floor of the parking garage to help offset some of the space restrictions they are facing.

Commissioner Allen stated that she is very impressed by their current land-based facilities and amenities, but is frustrated by the fact that she continues to hear that prior to the addition of the land-based facilities, additional gaming positions are necessary. She wondered whether it was possible to separate the request for additional land-based facilities and gaming positions. Mr. Welch advised that the profit margins from the existing hotel are good, but not sufficient to cover the estimated cost of $80 million for the second hotel tower and convention center. Financial institutions would also require proof that the money would be paid back.

Commissioner Allen stated it was her understanding that if she voted to approve the whole project, it would be completed as follows: gaming positions and the first phase, and the rest of the project would be completed in the second and third phases, except for

the parking garage. Mr. Welch advised that the hotel would be the next step in the process, probably in the next fiscal year due to capital considerations.

Mr. Hill stated there are a couple of other issues that affect the cost factors: 1) all of the employees are paid 125% of minimum wage as required by statute, and 2) the admission fee they are required to pay for each individual who enters the casino, even though they may not gamble.

Commissioner Allen expressed her appreciation for all of the information provided by Harveys, and the rest of the industry who have brought forth extensive land-based expansions, but reiterated that it always comes down to the fact that in order to get the land-based facilities, they have to have the additional gaming positions. She stated that she is impressed by all of the proposed land-based facilities, but it is becoming more and more difficult for her to balance the need for land-based facilities with the additional gaming positions that usually accompany the proposals.

Commissioner Hansen stated that he had categorized his feelings into five significant benefits that he feels will come out of the proposal:

1) Brings approximately $80 million of taxable property into Council Bluffs and Iowa;

2) Significant boost to the economic activity for the Council Bluffs area;

3) The proposal responds to a known market level;

4) Due to the location of the facility, it pulls in a disproportionate amount of out-of-state money; and

5) Fulfills the legislative intent to promote tourism and economic benefit in Iowa.

Commissioner Hansen stated that he endorsed the project in its entirety.

Chair Sealock noted that when Ameristar and Harveys were first granted licenses, they made extensive promises to the Commission and Council Bluffs regarding their respective projects, and both have exceeded those promises. She noted that Council Bluffs has become a destination resort. When you take into consideration the fact that the riverboat is already crowded, if Harveys were to add the second hotel tower and convention center without adding additional gaming positions, those guests would end up going elsewhere to gamble. She feels the project would be a boost to the Iowa economy.

Mr. Ketterer stated that Chair Sealock had mentioned the concerns of the Commission and the people of Council Bluffs regarding all of the promises made by Ameristar and Harveys during the license granting process. He noted that conditions were placed on the licenses in terms of fulfilling those promises prior to opening. Mr. Ketterer stated that perhaps that was Commissioner Allen's concern, and suggested that perhaps Harveys would be willing to make a similar commitment with regard to phases two and three, keeping in mind that they have to come before the Commission in March for their license renewal.

Mr. Ketterer stated that Commissioner White raised a good point about being competitive with the hotel, which is necessary from a revenue standpoint. Mr. Ketterer indicated that his concern would be patron safety and customer service if the number of hotel rooms in the area is doubled or tripled, as well as the increased number of conventions. He expressed concerns about crowd control and safety on the vessel, and how that would be handled. Mr. Ketterer is concerned that the out-of-state business is not turned away due to a lack of space.

Mr. Ketterer noted that in fairness and consistency, the Commission has authorized Ameristar's expansion project, and that Harveys' project should receive equal consideration.

Hearing no further comments, Chair Sealock called for a motion. Commissioner Hansen moved to approve Harveys' expansion plan as presented. As there was not a second, the motion failed.

Chair Sealock called on Harveys' to present their contracts for Commission approval. Mr. Hill presented the following contracts:

- Midwest Coatings Company – Crack Sealing, Sealcoating, and Striping of Parking Lots at Harveys Casino Hotel
- NFM Builder Sales – Carpeting and Installation; Removal of Old Carpet; Additional Purchases of Furniture and Equipment in 1998
- Western Engineering Co., Inc. – Prepare Land and Establish Proper Drainage for Parking Lot Expansion

Mr. Hill advised the Commission that all of the contracts were with Iowa-based vendors, and were not related party contracts. All of the contracts deal with improving the facility in one way or another.

Hearing no discussion, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contracts as submitted by Harveys. At this time, Commissioner White asked Mr. Hill about the contract with NFM Builder Sales. He questioned where the carpet would be coming from. Mr. Hill stated that he did not know where the carpet was manufactured, but from previous experience, stated the manufacturers tend to be located in Georgia, North Carolina and that region of the country. He noted that NFM is a division of Nebraska Furniture Mart, located in Omaha. Hearing no additional discussion, Chair Sealock called for a second to the motion. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-97)

Chair Sealock called on Lady Luck Bettendorf to present their contracts for Commission approval (see attached list). Nancy Donovan, General Manager, advised the Commission that they hope to open the 256-room hotel the first weekend in September. She noted that the last three months have been record-breaking months.

Commissioner Allen stated that in reviewing the contracts, she noticed several with dollar amounts in broad generalities. She referred in particular to the contract with GVC/Toshiba for a video wall in the Roger Craig Sports Bar for $150,000. Ms. Donovan explained that this particular contract ties in with the second deck expansion. This contract is for a large video wall that will allow them to show a variety of sporting events. Lady Luck determined GVC/Toshiba had the best product after viewing several product lines and manufacturers.

Commissioner Allen then asked Ms. Donovan about the contract with Milliken & Company for custom carpeting. Ms. Donovan advised Commissioner Allen that Lady Luck's corporate office had decided to use 3x3 carpet tiles that have worked very well for them in some of their other properties. She stated it was her understanding that Milliken had the patent on this particular carpet. The Midwest representative resides in Chicago; however, all billings and payments are through the New York office. Commissioner Allen asked if the carpet was not available in Iowa. Ms. Donovan indicated that it was not.

Commissioner White asked several questions regarding the contracts with American Hotel Register and Erwyn for hotel supplies. Ms. Donovan noted these companies are suppliers to the hotel industry. Commissioner White asked if Iowa vendors had also been given an opportunity to submit bids. Ms. Donovan stated that Lady Luck had determined the specific items they wanted to place in the hotel rooms, reviewed several samples of each item to determine the type/style they wanted to put in the room, which determined the company that would receive the business. Lady Luck has established a theme that will be carried out throughout the hotel, which also played a part in determining what products would be used in the rooms.

Commissioner White stated that the project was approved in order to provide business for Iowa-based vendors, and he felt Lady Luck was overlooking the need to use Iowa vendors. Ms. Donovan stated Lady Luck tries to work with Iowa vendors whenever possible. Curt Beeson, legal counsel for Lady Luck, advised that many of the contracts involve an Iowa sales rep but the contract is ultimately with the provider and manufacturer due to cost savings.

Commissioner Allen asked Ms. Donovan about the contract with Crown Home Entertainment, Geneseo, IL, for televisions in the hotel rooms. She noted they had received bids from AVS, Inc. and Erwyn, and asked where they were located. Ms. Donovan stated that AVS was located in Des Moines, Iowa, and Erwyn is in New Jersey. Commissioner Allen noted that for an additional $7,000, Lady Luck could have given the bid to an Iowa vendor. Ms. Donovan stated that all vendors submitted bids on the same model, so the vendor selection came down to who submitted the lowest bid.

Commissioner Hansen stated that he sympathized with the comments made by Commissioners Allen and White, but is frustrated at the same time. He feels the Commission should ask the Iowa Department of Economic Development to analyze the purchasing problems of the licensees in order to try and attract those types of businesses

to Iowa. Commissioner Hansen moved to approve the contracts as submitted by Lady Luck.

Commissioner Allen stated that she was not comfortable with the contracts going to out-of-state vendors, and wanted to separate the in-state and out-of-state contracts. Commissioner Allen moved to defer all contract submissions of Lady Luck until the July meeting to allow them to seek Iowa vendors. Commissioner White seconded the motion. Chair Sealock asked Commissioner Hansen if he was amenable to the amendment to his motion. Commissioner Hansen answered in the affirmative. Chair Sealock requested a roll call vote. The motion carried unanimously. (See Order No. 98-98)

Chair Sealock called on Southern Iowa Gaming. Larry Seckington, legal counsel, presented the following contracts for Commission approval:

- Charles W. Gower – Construction of Barge for Floating Casino on West Lake, Osceola, Iowa
- Veenstra & Kimm, Inc. – Contract for Services for the Osceola, Iowa, Clay Street Project, I-35/Clay Street Interchange, Bridge over I-35 and County Road Relocation
- Wells Fargo Bank – Secured Construction and Term Loan to Finance Lakeside Casino and Hotel

Hearing no discussion on the contracts, Chair Sealock called for a motion. Commissioner White moved to approve the contracts as submitted. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-99)

Mr. Seckington stated that after speaking further with staff, he has been advised the requests for approval of the site plans, building elevation, floor plan for land-based facilities, and boat design did not need to be placed on the agenda as staff has the authority to approve such items. He noted that the plans for boat design show approximately 925 slot machines. Mr. Seckington clarified they are not requesting approval for a specific number of slot machines at this time.

Mr. Ketterer, noting that admission fees generally start approximately 6 weeks prior to boat operations, stated that he had not included Osceola in the FY '99 fee schedule as he did not feel Southern Iowa would begin operations between April 1 and July 1, 1999; that the earliest they are looking at now would be between August 1 –15, 1999, placing them in the next fiscal year. Mr. Seckington stated that Southern Iowa would exercise options in July to purchase the necessary land and complete the annexation process at that time. He stated that based on Mr. Grace's estimates on how fast construction can proceed, Southern Iowa anticipates opening sometime between July and mid-August 1999. They expect to submit a grading contract at the July meeting in order to start with the dirt work.

Mr. Seckington noted that he had reviewed the other plans submitted with Mr. Ketterer and Terry Hirsch, Director of Riverboat Gambling. Other than some minor realignments

on the site plan and floor plans for the land-based facility, they are exactly as proposed to the Commission when they were granted the license.

Chair Sealock called on the President Riverboat Casino. Mark Lohman, General Manager, submitted the following contracts for Commission approval:

- Apex Systems, Inc. – Computer Hardware (Amended)
- IGT – Slot Machines, Components, Player Tracking System, Maintenance Program
- Northern Video Systems, Inc. – Recurring Purchases, Primarily for Surveillance Department
- Video Lottery Consultants, Inc. – Purchase of 20 Gaming Devices after 60 Day Trial Period (Approved as part of slot floor expansion)

After a brief discussion concerning the contracts with Northern Video Systems, Inc. and Video Lottery Consultants, Commissioner White moved to approve the contracts as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-100)

Chair Sealock called on Jim Rix, General Manager of Dubuque Diamond Jo (DDJ), who presented a contract with Casino Data Systems for the Lease of an OASIS II Accounting/Player Tracking Computer System.

Hearing no discussion regarding the contract, Chair Sealock called for a motion. Commissioner White moved to approve the contract as submitted by DDJ. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-101)

Chair Sealock called on Miss Marquette. Kim Kreber, Director of Finance, presented the following contracts for Commission approval:

- Ready Bus Tours – Company Operates Buses that Handle Daily Line Run out of La Crosse, Wisconsin
- The St. Paul Insurance Company – Property and Liability Insurance
- Sysco Food Service of Iowa – Food, Supplies

Following a brief discussion regarding the Sysco contract, Chair Sealock requested a motion. Commissioner Allen moved to approve the contracts as submitted by Miss Marquette. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-102)

Chair Sealock called on Ameristar Casino. Jeff Terp, Vice President of Business Development, presented the following contracts for Commission approval:

- Commonwealth Electric Company of the Midwest – Electrical Repairs and Maintenance for the Property
- Donis Corporation – Various Printing Supplies
- Egan Supply Company – Cleaning Supplies
- First Bank Northwest Airlines Acct. – Company Credit Card for Travel-related Expenses
- Omaha Communications Systems, LTD. – Various Communication Equipment
- Phoenix Promotional Products, Inc. – Promotional Products, Customer Giveaways, Gift Shop Items, and Logo Merchandise
- Rodney E. Lay & Associates – Design & Other Related Fees for Ameristar's Proposed 3rd Deck Addition
- Show Pros – Set Up Services for Entertainment & Miscellaneous Fees
- The TPA – Corporate Medical Claims Processor
- V.S.R. Lock dba Reno Safe & Lock – Lock Supplies for Slot Machines

Mr. Terp advised that the contracts with Rodney E. Lay, Omaha Communications and V.S.R. are sole supplier contracts. Commissioner White asked Mr. Terp about the contract with Egan Supply Company. Mr. Terp explained they are the only company in the area that carries a specific brand and product preferred by their housekeeping personnel. He stated that Egan is not a sole source supplier, and they do use some Iowa vendors. Mr. Terp noted that Housekeeping continues to test other products, but have not found any to be as effective as this particular product. There was a brief discussion concerning the contract with Omaha Communications Systems, Ltd.

Hearing no further discussion, Chair Sealock called for a motion. Commissioner Hansen moved to approve the contracts as submitted by Ameristar. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-103)

Chair Sealock called on Catfish Bend Casinos (CBC). Den Kehl, General Manager, asked that the request for authorization to add 32 slot machines to the existing casino floor be tabled until the July meeting as CBC was not able to submit the economic impact information until the previous evening. The Commission granted Mr. Kehl's request.

Chair Sealock called on Prairie Meadows Racetrack & Casino (PMR&C). Tom Timmons, Vice President of Operations, submitted the following contracts for Commission approval:

- Cummins Allison Corp. – Service Maintenance Agreement Renewal for Jetsorts in Cages
- Coady Photography – Photographer for Winners Circle during Live Racing Seasons. PMR&C to receive 12% of Daily Receipts.
- Aramark Uniforms, Inc. – Uniforms, Supplies and Laundry for C&H, Facilities and the Slot Departments

- R & D Plumbing – Lease for Training Center (Related Party)
- Blecker Promotions - Concerts for PMR&C Patrons

Commissioner White asked about the contract with R & D Plumbing, which became a related party contract with the appointment of Terry Davis to the RACI Board. Mr. Timmons stated that PMR&C made substantial leasehold improvements to the building when their expansion plans were denied. Commissioner White noted that in a similar circumstance in Council Bluffs, the Commission had requested a statement indicating that the rent was within the market range. Mr. Timmons indicated the building in question was approximately 1,000 square feet, and the rent is $1,150 per month, or $11.00 per square foot.

There was a brief discussion regarding the Coady Photography contract.

Commissioner Allen asked Mr. Timmons about PMR&C's Conflict of Interest policy. Mr. Timmons stated that when an individual accepts a position on the RACI Board, they sign a statement requiring them to reveal any conflicts or potential conflicts of interest. He noted that when Mr. Davis was appointed, he did advise the Board that he was leasing a building to PMR&C.

Hearing no further comments regarding the contracts, Chair Sealock called for a motion. Commissioner White moved to approve the contracts submitted by PMR&C, subject to RACI providing the requested market range documentation regarding the R & D Plumbing contract within ten days. If the information is not provided, the item is to be placed on the July Commission agenda. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-104)

Chair Sealock called on Bluffs Run Casino. Doug Okuniewicz, Director of Operations, presented the following contracts for Commission approval:

- Bergman Incentives – Safety Incentive Program
- Nelson News, Inc. – Daily Racing Form
- Wolfhead Productions – Booking Agent

Commissioner White asked about the bids between Bergman Incentives - $104,208 (Out-of-state vendor); and Jostens - $110,448 (Iowa vendor). Mr. Okuniewicz advised Commissioner White that both companies use the same merchandise/awards. Commissioner White noted that Bergman did not submit their bid until after Jostens, giving them an opportunity to review Jostens' bid. Mr. Okuniewicz stated that Bergman had not reviewed Jostens' bid. Commissioner White noted that Jostens' bid contained a "first prize level", but that he did not see a similar notation on Bergman's bid. Mr. Okuniewicz stated that was applicable only to Jostens. He noted the comparison to determine which vendor to go with was done based on product.

Commissioner White moved to postpone approval of the contract with Bergman Incentives so BRC can do an apples to apples comparison, and approve the contracts with Nelson News, Inc. and Wolfhead Productions. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-105)

Chair Sealock moved to Administrative Business. Linda Vanderloo, IRGC staff, gave notice that requests for the proceeds of the Greyhound Promotion Fund for Fiscal Year 1999 are due in the Des Moines IRGC office by July 10, 1998. Ms. Vanderloo stated that extra copies of the application process were available by the entrance to the meeting room. No action is required at this time.

Commissioner White asked to have the discussion regarding the continuation of the Wednesday evening dinners postponed until the July Commission meeting.

Chair Sealock moved to Public Comment. Jeff Terp, representing the Gaming Association of Iowa, and John Pavone, representing the Iowa Riverboat Association, addressed the Commission regarding recent newspaper articles and Letters to the Editors with regard to compulsive gambling. Mr. Terp noted that compulsive gambling has been a top concern of the industry since its inception. A section of their license renewal application indicates the licensees' various activities supporting the Iowa Gambling Treatment Program. Mr. Terp noted that the gambling industry has created the National Center for Compulsive Gambling located in Kansas City, Missouri, through voluntary contributions from the gaming industry. The purpose of this facility is to develop programs and treatment methods to help the compulsive gambler. In a meeting of the trade associations the previous evening, they were advised that insurance carriers do not recognize compulsive gambling as an illness like they do other addictions.

Mr. Terp stated that the gaming industry, through the National Center for Compulsive Gambling, recently completed the first national study ever done on this issue. Harvard University and Dr. Howard Schafer, one of the foremost authorities on compulsive gambling, did the study. The study has been widely accepted by various groups.

Mr. Terp advised the Commission that the Iowa licensees give approximately $2.5 million a year to the Iowa Gambling Treatment Program through their tax revenue. In addition, they distribute brochures at their individual properties, post signs and cards for the 1-800-Bets-Off program, include information regarding the Iowa Gambling Treatment Program in all their mailings, and sponsor training programs for employees and management on compulsive gambling. He noted that several licensees participate in Project 21 to address underage gambling, and several have initiated voluntary trespass programs. Participants in this program sign a legal document that prevents them from entering the facilities. If the individual does enter the facility, they can be arrested for trespassing. The licensees are looking into the feasibility of standardizing the agreement, and make it a blanket agreement at all Iowa facilities. Mr. Terp noted that this program does have flaws. Mr. Terp advocated check cashing limits, and explained Ameristar's policy.

Mr. Pavone stated that the two trade associations were going to be working together to develop additional comprehensive programs to help the compulsive gambler.

Greg Garland, an attorney from Omaha, addressed the Commission for the purpose of refuting the validity of documents the Commissioners received the previous evening. He indicated he wanted to know from whom the Commission received the document and whether his signature was on the letter the Commissioners allegedly received from him. Chair Sealock advised Mr. Garland that since he had looked at the letter, he knew his signature was not on the letter. She suggested that he work with staff. Chair Sealock further advised him that the issue he wished to address with the Commission is not within their jurisdiction, and does not belong in a Commission meeting forum. Chair Sealock advised him to submit any pertinent documents to staff, who would forward said documents to Commission members if appropriate.

As there was no further public comment, Chair Sealock called for a motion to adjourn. Commissioner Hansen moved to adjourn. Commissioner White seconded the motion, which passed unanimously. The meeting adjourned at 11:10 AM.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS
SECRETARY

IOWA RACING AND GAMING COMMISSION
MINUTES
JULY 23, 1998

The Iowa Racing and Gaming Commission (IRGC) met at 8:30 A.M. on Thursday, July 23, 1998, at Adventureland Inn, I-80 and Highway 65, Altoona, 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 at 8:30 A.M. and called for a motion to approve the agenda. She advised those in attendance, that there would be no Executive Session as indicated on the agenda. Commissioner Peyton moved to approve the agenda. Commissioner Allen seconded the motion, which carried unanimously.

Chair Sealock moved to the election of a new chair and vice-chair. Commissioner White nominated Commissioner Peyton to serve as Chair. Hearing no further nominations, Chair Sealock called for a motion. Commissioner White moved to elect Commissioner Peyton as Chair for a one-year term commencing with this meeting. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-106)

Chair Sealock stated that serving as Chair of the Commission had been a tremendous learning experience, and gave her the opportunity to meet many people. She acknowledged the work ethic of the IRGC Administrator and staff, as well as Assistant Attorney Jeff Farrell, who represents the Commission. Chair Sealock thanked Gene Meyer of the Division of Criminal Investigation for developing a good working relationship with the Commission. She thanked Commissioner Peyton for his respect and support over the last year, and stated that she looked forward to supporting him. At this time, she turned the gavel over to Commissioner Peyton.

Chair Peyton stated that the Commission, staff and racing and gaming industry are very appreciative of Commissioner Sealock's services.

Chair Peyton called for nominations for the vice-chair. Commissioner White nominated Commissioner Allen to serve as vice-chair for a one-year term commencing with this meeting. Hearing no further nominations, Chair Peyton called for a motion. Commissioner White moved to elect Commissioner Allen to serve as vice-chair. Commissioner Sealock seconded the motion. The motion carried 4-0. Commissioner Hansen abstained from voting. (See Order No. 98-107)

Chair Peyton called for a motion regarding the minutes for the June 18, 1998 Commission meeting. Commissioner Sealock moved to approve the minutes as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-108)

Chair Peyton moved to the Final Adopt Rules. Commissioner White stated that in May, under Notice of Intended Action, the Commission adopted rules that dealt with the location and number of licenses, expansion at existing facilities (additional slot machines or gaming devices) and ATM machines. He noted that most of the Commissioners were present at the July 7th Public Hearing regarding these rules. Additionally, they have received the transcript of the hearing and copies of statements made at that hearing. Commissioner White noted that Assistant Attorney General Jeff Farrell had issued a letter of advice stating that the Commission does have the authority to limit the number of gaming devices at existing gaming facilities as long as they act reasonably, and not arbitrarily and capriciously. Additionally, Mr. Farrell's letter also indicated that the Commission has the authority to determine what credit can be made available to a casino customer. Commissioner White noted that it is a felony in Iowa for a casino to offer credit to a customer that has not been approved by the Commission.

The initial rule proposed for ATM machines would have removed those machines from the racetrack enclosures and riverboats. He noted that the racetracks could encounter some problems in finding other locations for the machines, but the riverboats would not encounter that problem because of their land-based facilities. Commissioner White stated that one of the issues raised at the public hearing was the recognition that some individuals use their ATM card (debit card) to gain access to their own asset accounts. It was recommended that a distinction be made between the ATM machines where individuals access their own money and those machines in which they gain access to credit. Commissioner White noted that several facilities have Comcheck machines in which the individuals call a number, read a number from a card, go to a cashier and sign a document and receive cash. He feels these machines are a ruse to get around the prohibition of the use of credit at casinos. Commissioner White noted that when legislation passed prohibiting the use of a credit card at a casino, they did not want people using the credit line on their credit cards to gamble.

Commissioner White stated that he intended to make two motions. The first motion would be to amend 491-1.6(4) as follows:

> Paragraph "a" would ban the use of credit card machines at all casinos for the purpose of obtaining gambling funds on casino premises, but would allow credit cards to be used for the purchase of services and items not related to gambling.
>
> Paragraph "b" would require ATM machines, resulting in a debit to a customer asset account, to be located in non-gambling areas of the licensee's facility as approved by the Commission.

Commissioner White indicated that his proposal would be to postpone "b" until the August Commission meeting. He noted that if the amendment is adopted, he would then offer a motion to Final Adopt subpart "a" dealing with credit cards and postpone subpart "b" until the August Commission meeting. At this time, Commissioner White read his proposed amendment to rule 491-1.6

Commissioner White moved to adopt the amendment to Noticed rule 491-1.6. Commissioner Allen seconded the motion.

Commissioner Allen asked Commissioner White to clarify "non-gambling areas of the licensee's facility". Commissioner White stated that he would prefer any action on subparagraph "b" be deferred until the August Commission meeting to allow for additional discussion of this particular item. He requested that the licensees provide some information prior to the next Commission meeting indicating how workable this provision would be for them.

Commissioner White moved to amend his motion to final adopt 491-1.6(4)(a) and postpone until the August 20, 1998 Commission meeting any action on 491-1.6(4)(b). Commissioner Allen seconded the amendment. Following a brief discussion, Commissioner White withdrew this motion to allow for discussion of his proposed amendment to the rule. Commissioner Allen withdrew her second.

Prior to asking Commission members to comment on the proposed amendment, Chair Peyton called on Mr. Farrell to comment on the Commission's legal authority to adopt such rules.

Mr. Farrell advised the Commission that the Legislature had granted the Commission sole jurisdiction over gambling facilities in Iowa, and the authority to supervise those facilities. Beyond this broad authority, the Legislature granted the Commission the authority to adopt rules regarding the licensee's ability to issue credit, but the Commission has to look at those areas of the Code dealing with credit and determine what the Legislative intent is. After looking at the statute, Mr. Farrell stated he felt the Commission could adopt the proposed rules and be within the Legislative intent. He cautioned the Commission that the Administrative Rules Review Committee (ARRC) has given notice of their intent to block this rule. An objection by ARRC would require the Commission to prove that it was within their statutory authority to adopt said rule.

Mr. Ketterer, noting that both he and Mr. Farrell had attended the ARRC meeting, stated that a couple of the committee members did have some discussion indicating that the Commission may have some authority in this area.

Commissioner Hansen asked Mr. Farrell if the Commission's action on this amendment would be contrary to his recommendation to them in his confidential attorney-client memorandum issued July 22nd.

Chair Peyton stated that he felt the document was now public as it was being discussed during the public session of the Commission meeting. He advocated making said document public. Chair Peyton noted that the Commission has heard opinion after opinion regarding the Commission's authority to adopt such rules.

Commissioner Hansen, noting that he was somewhat sympathetic to the proposal and would reserve final judgment, stated that he felt the Commission needed to determine

whether amending the portion of the proposed rules the ARRC might view favorably would jeopardize the Commission's posture with the ARRC. Mr. Farrell stated that he had suggested the Commission may want to consider withdrawing the rules in his memorandum based on the significant ramifications an ARRC block of the rules would have. Having said that, Mr. Farrell stated that he felt a very good case could be made regarding the Commission's statutory authority to promulgate the proposed rules.

Commissioner White noted that a letter from Joseph Royce, legal counsel to ARRC, stated that "The Committee simply cannot tolerate re-casting failed legislation into administrative rule...". He stated there was nothing in the bill vetoed by the Governor that referred to credit. Mr. Farrell stated that he based his analysis on existing statute, not the failed legislation. Commissioner White stated that he did not recollect the vetoed bill containing any language addressing credit at the licensed facility, and if that is true, then the Commission is not attempting to adopt rules based on failed legislation.

Chair Peyton stated that several facilities have already removed the credit machines from the casino floor.

Commissioner Hansen asked if the Commission had the option of withdrawing the proposed rules and then subsequently filing a rule on the credit card/ATM machines. He wondered if that process would be more compliant with Mr. Farrell's recommendation than the process currently being debated.

Mr. Farrell stated he made his recommendations based on the fact that they would be confidential, but noted that the Commission did have the ability to make such document public. He indicated the Commission does have the ability to withdraw the proposed rule and do a new Noticed rule later.

Commissioner White advised Commissioner Hansen that if the Commission were to proceed with the final adoption of the credit card rule, the ARRC has certain standards they would be required to apply to the rule. He stated he was willing to give the Committee the benefit of the doubt that those standards would be used; and that he did not see any benefit in delaying Commission action on a rule that the AG's Office has deemed to be within the Commission's statutory authority.

Commissioner Sealock stated that she viewed the proposed amendment as a compromise by Commissioner White because she had concerns about patron's safety and their ability to have access to their own money. She stated that she has always been opposed to using credit to gamble, but to cling to these rules is going against the advice of the Commission's legal counsel. Commissioner Sealock stated that the issue has gone beyond whether or not the Commission has the ability to adopt the proposed rules. She stated that she agreed with Commissioner Hansen's suggestion of withdrawing the proposed rules and reworking the credit rule.

Commissioner Peyton stated that he felt the problem with the recommendation was that there are numerous opinions stating that the Commission is acting beyond its scope of

authority, representatives of various groups attended the ARRC meeting at which the Commission made no attempt to put forth their authority to adopt such rules, allowing the ARRC to assume that the Commission doesn't have the authority, and the ARRC voices their concern that there may be an objection to the rules. This scenario led to Mr. Farrell's recommendation that the Commission does have the authority to adopt such rules, but because ARRC might object, the Commission should withdraw the rules. He feels the Commission has created the case for the objection by not arguing that they do have the authority to adopt these rules. Chair Peyton stated that he felt Mr. Farrell's opinion was very concise and accurate, but disagrees with the final recommendation. He wondered why the Commission has waited so long to deal with the credit problem; that the credit card issue is already in the statute.

Mr. Farrell advised Chair Peyton that he made his recommendation for the purpose of placing the Commission in the best posture possible in the event of litigation. He stated that if he were on the Commission, he would probably support the rule. Mr. Farrell noted that the ARRC meeting was not for final action, he was not aware of all the issues at that time, and he did not expect to have any input.

Chair Peyton stated that, in his opinion, it was reasonable to assume that if the case were made that statutory authority already existed, then ARRC might not have made their threats.

Commissioner Hansen suggested withdrawing the rules from consideration, but accompanying the withdrawal with a statement embracing Commissioner White's credit card/ATM proposal, suggesting to ARRC that it was the Commission's intent to move forward on this issue and seek their support.

Commissioner White stated that he did not feel that was proper procedure. He stated that he had drafted the rule carefully in view of the concerns expressed by ARRC. He reiterated his belief that there was no language in the vetoed legislation addressing the credit issue. Commissioner White stated the Commission has clear authority to regulate credit in casinos, and did not see any point in postponing the adoption of this rule.

Commissioner Hansen stated that he felt it was good common sense to withdraw the rules after reviewing the memo from ARRC dated July 15th. He noted that the memo addressed the Commission's strong views on this issue, but suggested that a better solution would be to pursue new legislation during the 1999 legislative session.

Commissioner Allen stated that she found the memo from the ARRC to be very threatening and offensive. She stated that the letter was one of unconditional surrender.

Hearing no further discussion, Chair Peyton called for a roll call vote on the amendment to proposed rule 491-1.6(4). He clarified that this vote was to amend the language, not to final adopt the rule. The motion carried 4-1, Commissioner Hansen voting no. Chair Sealock, when casting her vote, clarified that it was for the amendment. (See Order No. 98-109)

Chair Peyton stated that the floor was open for discussion on the final adoption of 491-1.6(4) as amended. Commissioner White noted that subsection "a" refers to the use of credit cards in a casino and subsection "b" refers to the use of debit cards. He suggested the Commission final adopt "a" and either take no action on "b", or postpone any action until the August Commission meeting.

Mr. Farrell advised that the Commission could split the rule, but then the two parts of the rule would follow different tracks as to their effective dates. He noted the text of the rule has been changed, and he is not sure whether that change will be considered a substantive change, which would require the Commission to file a new Notice of Intended Action.

Commissioner White moved to final adopt 491-1.6(4)(a) and defer action on 1.6(4)(b) until the August Commission meeting. Commissioner Allen seconded the motion.

Commissioner Hansen voiced his objection, not on the content of the proposed rule, but on the procedure as it is contrary to legal counsel's advice. Commissioner Sealock voiced her agreement with Commissioner Hansen's comments. She emphasized that she was voting on the procedure, not the rule.

Commissioner Allen asked for the difference. Commissioner Hansen advised her that things are either constitutional or compliant with the statute. The different elements determine how a problem is approached.

Commissioner White stated that the Commission would be operating in a different venue if there was no support from the AG's office on the Commission's authority to adopt these rules.

Commissioner Sealock asked why these rules were necessary now if the Commission already has the authority to adopt them. Commissioner White stated they were necessary because of the Comcheck machines being used at all of the casinos. Chair Peyton noted that the alternative would be to provide notice to the licensees of the Commission's interpretation of the current rule and state that enforcement of said rule would begin on a specific date. Commissioner White noted that the outcome of this process is that the machines would be confiscated and the DCI would file charges against the licensee.

Commissioner Hansen noted that Mr. Farrell stated that this particular provision was the easiest part of the proposed law to defend, but that he still looked at the final recommendation, which was to withdraw the proposed rules from consideration.

Chair Sealock called for the question. Chair Peyton called for a roll call vote on the final adoption of 491-1.6(4)(a) and deferring action on 1.6(4)(b) until the August Commission meeting. The motion carried on a 3-2 vote, Commissioners Hansen and Sealock voting no. (See Order No. 98-110)

Chair Peyton moved to the final adoption of administrative rule 491-5.1(5). Commissioner White noted there were two parts to this rule. The first part deals with the

Commission's authority to determine the number and location of racetracks and riverboats. The second deals with the number of slot machines at a racetrack. This rule would limit racetrack licenses to one horse racing license in Polk County and two greyhound tracks – one in Dubuque County and one in Pottawattamie County. Commissioner White noted that the AG's office had issued a letter of advice to Representative Michael Cataldo stating that the Commission did have the authority to review, and deny, the expansion of the number of gambling games at existing licensees under appropriate circumstances. He stated that the letter indicated the Commission use specific criteria and standards when considering requests for additional slot machines. The AG's letter did voice some concern over the Commission making a blanket comment to licensees that they could not expand the number of slot machines at their facilities.

Commissioner White proposed the adoption of 491-5.1(5)(a) and (b) limiting the licenses to the current licensees and location, and postponing until the August Commission meeting consideration of 5.1(5)(c) regarding the increase in slot machines to allow for some additional fine tuning of this rule, which could necessitate the filing of a new notice of intended action.

Mr. Farrell stated that the Commission has clear authority to determine the number of racetrack and riverboats as set out in Iowa Code Chapters 99D and 99F. He noted the ARRC did not question the Commission's authority regarding this particular rule, but they did not separate the rules in their discussion. Additionally, with regard to the number of gambling devices or increases in the number of gambling devices, he noted that the AG's office has addressed this issue, indicating that the Commission has the ability to do so as long it acts reasonably. Mr. Farrell stated that it was his understanding that the Commission would be proposing additional standards to be used in addressing requests for additional slot machines. He stated the Commission would be better served to review the requests on a case by case basis.

Commissioner White asked Mr. Farrell if the Commission postponed consideration of 5.1(5)(c) and changed the language, if the public notice could be amended or if it would be more prudent to do a Notice of Intended Action. Mr. Farrell indicated he would be happy to make a recommendation after reviewing any proposed language.

Commissioner White moved to final adopt rule 491-5.1(5)(a) and (b), postpone action on (c) and amend the lead-in to read as follows: Limitation on location and number of racetracks. Commissioner Allen seconded the motion.

Chair Peyton stated that a motion had been made and seconded to amend 5.1(5) as stated by Commissioner White, final adopt subparagraphs (a) and (b), and postpone action on subparagraph (c) until the August Commission meeting. He called for any discussion.

Commissioner Sealock stated that she has spoken publicly since 1994 about gambling saturation in the state; and does not feel there needs to be any more casinos.

Commissioner Hansen stated that he shared Commissioner Sealock's views. He asked Mr. Farrell if it was still true that a rule can not be in direct conflict with statutory provision. He then asked Mr. Farrell if determining the number of licensees is a different prerogative than banning any application.

Mr. Farrell stated that he was not sure of the difference. If the rule were to go through, the Commission is not banning applications, but there would be no reason for anyone to submit an application. Commissioner Hansen noted that if the Commission were to adopt this rule, they would be banning any more licensees. Mr. Farrell stated that was within the Commission's statutory authority as they have the ability to determine the number of licensees. Commissioner Hansen referred to 99D.7(1) which requires the Commission to investigate any application at which time the Commission can make a determination as to the number that exists. He doesn't feel that given the present composition of the Commission there will be additional licenses issued. He considers that to be different than a ban which would leave two statutory provisions dangling that require the Commission to investigate applicants and that any qualified non-profit or qualified sponsoring organization may apply. Mr. Farrell noted that if provisions are in conflict, the more specific provision prevails. Commissioner Hansen stated that he is troubled by the fact that the Commission is taking the step of banning applications versus proposing a moratorium.

Commissioner White agreed the proposed rule is not a moratorium, but is exercising the Commission's authority to determine the number of licenses.

Commissioner Sealock noted that Commissioner White's proposed rule has limited the number of greyhound tracks to two in the counties in which they are currently located. This rule leaves no opportunity for others to apply in other counties should one of the existing tracks close. Commissioner White stated that the Commission could amend the rule if either of these unforeseen or unlikely events occurred.

Commissioner Sealock stated that Commissioner White's classifying the event of a racetrack or riverboat closing as unlikely was interesting in light of the fact that one racetrack has already closed and three riverboats left the state. Commissioner White noted that the Commission reviews financial statements. He called for the question.

Noting that the question had been called, Chair Peyton requested a roll call vote on the final adoption of 491-5.1(5)(a) and (b), and to defer (c) until the August 20th Commission meeting. The motion carried 3-2, Commissioners Hansen and Sealock voting no. (See Order No. 98-111)

Chair Peyton moved to the last of the rules up for final adoption – Chapter 20. Commissioner White stated that Chapter 20 deals with riverboats and parallels the rules on racetracks. This proposed rule would limit the number of riverboats at ten (10) and restricts those licenses to the counties in which they are currently operating or licensed to operate as of May 1, 1998. He noted that subparagraph (3) of the proposed rule dealt with the issue of increasing the number of gambling games on the excursion boats.

Commissioner White moved to final adopt 491-20.22(1) and (2) and postpone action on 20.22(3) until the August 20th Commission meeting. As he feels there is a difference in legislative intent between racetracks and excursion boats with regard to slot machines, it is his intent to work out somewhat similar rules but to make a distinction between the two. Commissioner Allen seconded the motion.

Commissioner White asked Mr. Farrell if his advice pertaining to this rule would be the same as that given for the racetracks. Mr. Farrell indicated that it would.

Commissioner Sealock asked Commissioner White why it was necessary if a riverboat closed that the new license had to be in the same county. Commissioner White stated that the proposed rule specifies the location, and the Commission has the authority to determine the number and location of licensees. Commissioner Sealock stated that in essence this rule would prevent other counties from applying for a license and conducting a referendum should a current licensee close. Commissioner White stated that he was not aware of any pending applications, and that the situation is similar to the issue under the racetrack provision. He stated that the people of Iowa have decided not to allow additional gambling by not conducting any more referendums.

Commissioner Hansen stated that he had one more conflict with existing statute, and that is the right of any county to precipitate a special election in the event that they would like to have a gaming casino or riverboat. The proposed rule would be in conflict with that statute.

Hearing no further discussion, Chair Peyton called for a roll call vote. The motion carried on a 3-2 vote, Commissioners Hansen and Sealock voting no. (See Order No. 98-112)

Chair Peyton advised Mr. Farrell that he felt the Commission should make his legal opinion regarding the Commission's authority to adopt the rules just discussed public information. Mr. Farrell stated that was their decision. As there were no objections, the letter will become public information.

Chair Peyton moved to the rules under Notice of Intended Action, which would amend rules 20.11(6)a(2), 20.11(6)d and 20.11(6)e regarding distributions by the qualified sponsoring organizations. Commissioner White, who submitted the proposed rules, noted the gambling law gives certain preferences to Iowa employees, vendors and entertainment. He noted that some qualified sponsoring organizations, particularly those on the rivers, distribute grants to out-of-state non-profit organizations. Commissioner White stated that he had requested an AG's opinion on the legality of those distributions. The AG's opinion stated there was no legal requirement that the distributions be made only to in-state non-profits. Commissioner White stated that while he disagreed with the opinion, he is cognizant of the fact that there are some agencies outside of the state that do serve Iowa. He would like to see a question in the grant application form asking out-of-state applicants to explain how the intended use of the funds would benefit the residents of Iowa if the grant were approved. Additionally, the non-profit groups would

be required to consider the response to that question during the grant review process. Commissioner White stated that the non-profit groups would retain the discretion to determine the grants awards. He noted that the rules do not give any weight to the response given by the applicant or the consideration by the qualifying sponsoring organization. Commissioner White stated that if he sat on a non-profit board, he would not vote for any out-of-state grant applications.

Bruce Wentworth, General Manager of the Dubuque Racing Association (DRA), stated that he appreciated Commissioner White's comments as they help to alleviate some of the questions and concerns raised by the proposed rule. Mr. Wentworth stated towns across the river from Dubuque are considered to be part of their "community" as some of the residents shop and/or work in Dubuque. He noted that in DRA's case 87% of the grant money stayed in Iowa, with 13% going out-of-state. Mr. Wentworth stated that, as a licensee, DRA wants to abide by the rules, but wondered how the proposed rules would be implemented and enforced. He wondered if the Commission wanted to get involved in the grant process prior to the grants being made, or afterward. He asked if the Commission wanted to see a list of the potential grant recipients, including those from across the river that DRA had determined were qualified to receive the funds, only to have the Commission strike them from the list. Mr. Wentworth wondered what would happen if the Commission questioned the distribution of grant funds after the money had been distributed. Would DRA be deemed to be in violation of the rule if the Commission disagreed with DRA's decision to distribute funds to an out-of-state non-profit group?

Commissioner White stated that too much was being read into the proposed rule. He noted that the Commission has never questioned the hiring practices at any of the facilities. Commissioner White stated that the intent of the rule was to make sure that the various qualified sponsoring organizations consider the benefit to Iowa residents when determining whether or not to give a grant to an out-of-state group. Commissioner White stated the Commission would not intrude any further into the grant distribution process. He indicated the rule was a "what you see is what you get" rule, and that no expansion of the rule is planned.

Mr. Wentworth stated he understood Commissioner White's comments to indicate that as long as the question is included on the grant application and the qualified sponsoring organization can state they did consider the benefit Iowa residents would receive when deciding to give funds to an out-of-state organization, that would be the end of the discussion with regard to out-of-state grants.

Chair Peyton called on Sam Curley, Director of the Council Bluffs Business Association (CBBA). Mr. Curley stated the CBBA is concerned that the proposed rule lays the groundwork that could ultimately cede authority for distribution of grants from local organizations to the Commission itself. The CBBA also feel the definition of "community" contributes to the problem.

Commissioner Sealock stated that Commissioner White had addressed several of her concerns in his previous comments. She noted that he had addressed those concerns

verbally, but the rule as written leaves room for a broad interpretation by future Commission members. Commissioner Sealock stated that she had served on numerous non-profit boards for metropolitan organizations that required her to drive to Omaha for the board meetings. The residents of Council Bluffs have found it is to their advantage to join with Omaha on various issues, and sometimes the money goes to Omaha, sometimes to Iowa. Commissioner Sealock noted that former Commission member Dick Canella once stated that each gambling license was unique in its own way. She noted that it is very difficult to draft a rule that is "one size fits all" when comparing apples to oranges. She questioned why it was necessary to have a rule when this particular process is already in place at most of the facilities. In her opinion, the current language in the proposed rule leaves the door open for future Commissions to review the grant applications.

Commissioner White, noting that there are detailed minutes of Commission meetings, stated the minutes from the meeting would be available to future Commission members to help them interpret the intent of the rule. He stated that he didn't understand the fear surrounding the proposed rule as each organization would still be able to determine which grant applications to fund.

Commissioner Allen stated that her interpretation of the rule is that it is to serve as an additional guideline in the distribution of funds, and that an out-of-state organization should not be denied funds simply because of their geographic location. She stated that she concurred with Commissioner White about the unnecessary fear about the possible loss of funds surrounding the proposed rule. Commissioner Allen stated that the initial decision as to which organizations to fund remains with the non-profit, and the purpose of the rule is to serve as an additional guideline for the non-profits.

Chair Peyton stated that Commissioner Hansen had an amendment to the language of the proposed rule. Commissioner Hansen suggested the following language changes to 20.11(6)a(2):

1) Strike the words "located outside the state of Iowa",
2) Substitute "state" for residents, and
3) Add "as well as the licensee" after Iowa.

Chair Peyton, noting there was no formal motion before the Commission, requested a motion prior to any discussion of Commissioner Hansen's suggestions. Commissioner White moved to adopt the rules as proposed under Notice of Intended Action, items one and two. Commissioner Allen seconded the motion.

Commissioner Hansen moved to amend the above rules as previously stated. In his opinion, removing the words "located outside the state of Iowa" makes the rule less discriminatory. He also referred to the AG's opinion issued in February that stated there was nothing in the statute to prevent the qualifying sponsoring organizations from giving grants to out-of-state non-profit organizations. Commissioner Hansen stated that he felt this rule takes the Commission further down the road of micro-managing the licensees.

Commissioner Hansen made a motion to adopt his amendments. Commissioner Sealock seconded the motion.
Commissioner White questioned the substitution of "state" for "resident". Commissioner Hansen explained that he felt when the term "state" was used, then they are allowed to talk about the economic benefits to the state collectively. Commissioner White then questioned the addition of the words "as well as the licensee". In his opinion, if the qualified sponsoring organization were to receive a benefit from the grant recipient, there would be a conflict of interest. Commissioner White stated that he could accept Commissioner Hansen's amendment if he would leave the word "residents" versus "state, and strike the words "as well as the licensee". Commissioner White moved to amend the amendment. Commissioner Hansen stated that he would be willing to accept Commissioner White's modifications. Commissioner Sealock agreed to the modifications.

Chair Peyton advised that the proposed rule had been amended by striking the words "located in Iowa". Hearing no further discussion regarding the amendments to the proposed rule, Chair Peyton called for a roll call vote. The motion carried unanimously. (See Order No. 98-113)

Chair Peyton then called for a roll call vote on the Notice of Intended Action amending rules 20.11(6)a(2) and 20.11(6)d as previously amended. The motion carried unanimously. (See Order No. 98-114)

Chair Peyton moved to item three under Notice of Intended Action to amend rule 20.11(6), which addresses prohibited distributions, by adding the following new paragraph: "No licensee or qualified sponsoring organization shall make a distribution to any organization that has as an employee, officer or director who is a member of the commission." He stated that the purpose of the rule is to eliminate potential conflicts of interests that could occur from a grant recipient receiving funds while a commission member sat on their board. Commissioner Peyton indicated there had been discussion since the drafting of the rule indicating that the proposed rule could potentially exclude someone from serving on a public school board or municipality, etc. In his opinion, those types of public bodies and governmental agencies do not present the same potential abuse as those agencies that may be seeking funds from the licensee/non-profit.

Chair Peyton called for any comments regarding the proposed rule. Commissioner Hansen stated that he had two amendments - one technical and the other is a different approach to the same problem. He noted that the technical amendment addresses the words "member of the commission". Commissioner Hansen stated that he had expanded that to include the commissioner's spouse, children or parents to be consistent with the same type of ethical standards the Commission has asked the non-profits to impose upon themselves.

Commissioner Hansen suggested the following wording in lieu of Chair Peyton's: "No commissioner shall express, or otherwise attempt to influence, a qualified sponsoring organization as to their preference for a potential grantee if the commissioner, his or her

spouse, children or parents are an employee, officer, director or member of the grantee entity. In his opinion, this would preclude commission members or any of their close family members from advancing their cause before the non-profit organization. Commissioner White seconded the motion.

Chair Peyton asked Commissioner Hansen if his proposed language was an amendment to his proposed language, or a substitution. Commissioner Hansen indicated it was an amendment.

Following a brief discussion, Chair Peyton stated Commissioner Hansen's amendment was out of order. Commissioner White moved to adopt the amendment to 20.11(6) as presented under Notice of Intended Action. Commissioner Allen seconded the motion.

At this time, Commissioner Hansen again offered his amendment to the proposed rule. Commissioner White seconded the motion, but offered a substitute amendment. Commissioner White suggested striking the word "as" from " has as an employee", and add, "This provision does not apply to employees, officers, directors or trustees of political subdivisions or their affiliated agencies or boards." He also indicated that he would add the following portion of Commissioner Hansen's language: "No commissioner shall express, or otherwise attempt to influence, a qualified sponsoring organization as to their preference for a potential grantee."

Commissioner White moved to substitute the above language for the amendment offered by Commissioner Hansen. Commissioner Sealock seconded the motion.

Commissioner Sealock noted that Commissioner White's amendment eliminated the spouse, children and parents. She feels there needs to be an explanation as to why the Commission is viewing their situation differently than the non-profits. Commissioner Peyton stated that he felt Commissioner White intended to leave that language in.

Commissioner White noted that he had expressed a preference for the grant applications funds to stay in Iowa, while he felt Commissioner Hansen was indicating that a preference for a specific charity should not be made.

Commissioner Peyton stated the substitute motion being debated would read as follows: "No licensee or qualified sponsoring organization shall make a distribution to any organization that has an employee, officer or director who is a member of the commission. This provision does not apply to employees, officers, directors or trustees of political subdivisions or their subordinate boards or agencies. No commissioner shall express, or otherwise attempt to influence, a qualified sponsoring organization as to their preference for a potential grantee." Commissioner White's amendment is more inclusive and removes any qualifications regarding related parties.

Hearing no further discussion, Chair Peyton requested a roll call vote on Commissioner White's substitution. The motion carried on a 4-1 vote, Commissioner Hansen voting no. (See Order No. 98-115)

Chair Peyton then called for a vote on the original amendment to 20.11(6)e as substituted. Commissioner Allen requested that Commissioner White read the pending vote language. Commissioner White read the following: "No licensee or qualified sponsoring organization shall make a distribution to any organization that has an employee, officer or director who is a member of the commission. This provision does not apply to employees, officers, directors or trustees of political subdivisions or their affiliated agencies or boards. No commissioner shall express, or otherwise attempt to influence, a qualified sponsoring organization as to their preference for a potential grantee."

Hearing no further discussion, Chair Peyton proceeded with the roll call vote. The motion carried 4-1, Commissioner Hansen voting no. (See Order No. 98-116)

Chair Peyton moved to the agenda items for the Iowa Greyhound Association/Iowa West Racing Association. Mr. Ketterer advised Chair Peyton that the IRGC office had received word that the issues regarding the arbitration panel members for slot revenues to be applied to greyhound purses had been selected. Arbitration has been set for August 28, 1998. The arbitration panel will be asked to resolve the dispute as to the interpretation of a portion of the 1997 arbitration decision regarding purse supplements. Mr. Ketterer stated that the Commission can expect a decision by September 3rd He advised Chair Peyton the Commission could move to the next agenda item as this item has been resolved.

Chair Peyton moved to the distribution of the Greyhound Promotion Fund as authorized under Iowa Code Section 99D.12(2)C. Linda Vanderloo, Director of Racing/Administration for IRGC, advised that the Iowa Greyhound Association (IGA) was the only entity to request to be the recipient of the Greyhound Promotion Fund. She noted that IRGC staff supported the request, but requested that they meet the September 3 deadline for submitting the arbitration decision to Commission staff.

Commissioner Sealock stated that the report before the Commission was the most substantive ever received.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Allen moved to approve IGA's request to receive the Greyhound Promotion Fund. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-117)

Chair Peyton moved to Harveys Casino Hotel for the presentation of their expansion plans for the riverboat and land-based facilities. Art Hill, Director of Finance, requested a deferral of their expansion plans until such time as they could consider the rules to be proposed at the August meeting due to changes and deferrals of final adopt rules at this meeting. Hearing no objection, Chair Peyton honored the request. Chair Peyton clarified that the proposed rules would not have any effect on Harveys' application, aside from the effective date of the rules. Mr. Hill stated that Harveys was cognizant of that fact.

Chair Peyton called on Prairie Meadows Racetrack & Casino (PMR&C) to give their presentation regarding a request for approval of a revised expansion plan and associated contracts. Bob Farinella, General Manager, presented a request to invest $30 million to renovate and enhance PMR&C's land-based facility in order to satisfy employee needs and back of house space requirements, customer demands for competitive services and to establish gaming position density level. He stated there are significant economic reasons for the expansion with the planned opening of Osceola and the newly expanded facilities at Tama. Mr. Farinella stated that in putting the presentation together, PMR&C reviewed the statute, the economic demands of the market and have had two independent economic studies completed. They also included a study completed by Christiansen/Cummings on the Iowa market, and did some analysis on their own based on the factual data as published by the Commission.

Mr. Farinella noted that during previous presentations, the Commission had expressed concern about them building on leased property without having some way to recoup some of the value they were making in the event circumstances with the facility would change. He stated that PMR&C has leased some space to help with crowding. Additionally, they have given a proposal to Polk County stating that for the dollar value of their additional leasehold improvements, RACI would be entitled to recoup a portion of the investment should the County decide to sell the facility. The proposal would allow PMR&C to recoup 100% of the investment if the property is sold or is in construction within one year, or reduced by 10% for each year thereafter. RACI/PMR&C feels this would protect their investment. He noted that Polk County has yet to approve the proposal, but they have received indications that there has been some reasonable acceptance of the proposal by Polk County.

Mr. Farinella noted that several references have been made to the difference between riverboats and racetracks. PMR&C has asked their independent counsel, as well as others, to give them an evaluation of the statute. At this time, no one is able to locate a difference delineated in the statute. He noted that in all cases, racetracks must follow the rules and statutes that apply to riverboats.

Mr. Farinella noted that a past concern was no public support for the project. The application contains letters from several local, city, county, and state organizations, the Thoroughbred & Quarter Horse Racing Associations and several others.

Mr. Farinella stated that PMR&C feels it is imperative they be allowed to proceed with this project in order to remain competitive and meet the needs of their customers. He noted the market has continued to mature, but PMR&C has been stagnant in their ability to renovate, enlarge and enhance the facility to accommodate the demands of their customers. It is their belief the following is necessary to meet the demands of their customers: first class presentation of their racing product, first class buffet and restaurant, entertainment lounge, highly attractive public space of sufficient volume and ambiance, fresh air environment and safe and efficient movement through the facility.

Mr. Farinella stated that PMR&C had looked at the market in Iowa continuously. Based on information obtained from IRGC's monthly revenue reports, PMR&C has consistently been constrained at twice the average of the other Iowa licensees for the last eight months. Chair Peyton asked Mr. Farinella where he could find the numbers used to support this statement. Mr. Farinella advised him they were located behind Tab 4 of the application. Chair Peyton asked what the numbers represented. Mr. Farinella stated the numbers were the relationship between performance of the machines. In addition, they considered the win per unit per day and win per patron per day.

In preparing the application, PMR&C also looked at the population. After reviewing the major competitive areas in Iowa, the one with the highest number of people per available slot position presently has 314 people per slot machine. The average for Iowa is approximately 131, with the lowest figure being 35 people per machine. At the present time, PMR&C has 314 people per slot machine. If Osceola is included in the competitive market area for central Iowa, PMR&C would still have 156 people per slot machine; based on 1500 slots at PMR&C and 850 machines at Osceola. This is still higher than the average density in Iowa. Mr. Farinella stated that the figures did not include Tama, as it are located outside PMR&C's 50-mile radius. Without taking Osceola into consideration, PMR&C's average density per machine would drop to 244 if they were allowed to increase the number of slot machines to 1500. Even if they were allowed to increase the number of slot machines, PMR&C would still have a higher population per machine in their competitive market than any other market in Iowa.

Mr. Farinella stated that casino growth was also reviewed in preparing this application. He took the number of slot machines reported on the monthly revenue report from the end of 1995 and compared that to the numbers shown on the June 1998 monthly revenue report. During that period of time, the number of slot machines in Iowa increased by 5,371 positions, or an increase of 90.7%. He then looked at the three requests scheduled to be before the Commission today and assumed a total of 698 machines before the Commission for approval. They also studied the growth in casino revenues throughout the state of Iowa based on projects approved by the Commission – larger boats, more gaming positions, additional hotel facilities, restaurants, etc. From fiscal year (FY) 1996 to FY 98, there was an adjusted growth in casino revenue of 23.4%, including PMR&C. During that same time period, PMR&C has only been able to increase and satisfy its market demand by 7.7%.

Mr. Farinella also addressed patron visitation from the standpoint of being able to satisfy customer demand. From FY 96 to FY 98, attendance at the facilities around Iowa increased by 23.1%; however due to the limitations of the facility, PMR&C only had a growth rate of 4.7%

Mr. Farinella noted that the Board of Directors of RACI is concerned about being able to maintain an economically viable facility into the future, especially when taking into consideration the increasing gaming tax. They also believe that as a business entrepreneur and as a responsible corporate citizen in the State of Iowa with the rights

granted to them to operate a gaming and racing operation, that they have been restricted up to this point of time due to the factors set forth previously.

Mr. Farinella stated that RACI wants to invest $30 million in the community to expand and enhance their facility to better meet customer demand. He noted that the Commission has previously asked about the land-based adjustment, the commitment and funds RACI was putting up to show the Commission they were serious about their operation. Mr. Farinella stated that PMR&C is one of the most intense land-based operators of any operator in Iowa, and with the additional $30 million investment in its plant facility, PMR&C would maintain that position. He noted that Commissioner White has previously made statements that one of the goals of the gaming industry is to keep gaming dollars in Iowa. Mr. Farinella stated that this proposal is a significant commitment on the part of RACI's Board of Directors to invest in Iowa. Mr. Farinella stated that the Commission has approved foreign-owned hotels, larger gaming boats, new facilities and additional gaming positions. He also referred to the recent expansion at the Meskwaki facility in Tama, which is untaxed and unregulated.

Mr. Farinella concluded his presentation by stating the previous expansion approvals have allowed growth all around PMR&C's competitive market, and by not being allowed to grow and meet customer needs, PMR&C has been relegated to a non-competitive and somewhat economically uncertain future. He noted it is very difficult to operate a business and be charged with a mission to grow and nurture the horse industry in Iowa. It is their belief they have made that commitment, worked out a Lease on the facility with Polk County and are providing significant financial benefits to the community. PMR&C feels that in order to fulfill the legislative mandate and remain economically viable, they need to have the Commission's approval to continue to pursue the design work for the project in order to accommodate the gaming inventory at the level they feel is necessary, which is supported by an independent evaluation, to meet the market demands.

Commissioner White noted that Dubuque has a riverboat and track, and that Council Bluffs has two riverboats and one track. He noted that Polk County held a referendum to establish a riverboat in Polk County. He acknowledged there may be a gambling demand that is focused on PMR&C because there is no riverboat. In his mind, he has tied the Osceola riverboat with PMR&C to meet the central Iowa market. He noted that Polk County voters rejected the idea of a riverboat. Mr. Farinella stated that Polk County residents assume PMR&C is their gaming facility and the defeat of the riverboat referendum was a vote for PMR&C. He advised Commissioner White that the history cited is correct, but his assumptions regarding gaming in Polk County are skewed based on direct input from community members.

Commissioner Hansen advised Commissioner White that the proposal for a riverboat on Gray's Lake was substandard. More importantly, the proposal was made at a time when PMR&C was heavily in debt and it appeared the taxpayers of Polk County would end up repaying the debt. Commissioner White noted there has not been a referendum regarding a riverboat since PMR&C has become successful. He noted that he feels there are distinctions between slot machines on riverboats and at the racetracks.

Commissioner White stated that he remembered the Commission approving some leasehold improvements in November, and was confused as to whether the proposal before the Commission at this time included additional lease improvements. It was his recollection that the Commission had approved all proposed racetrack-associated construction projects and 50 additional slot machines, with the revenues from those machines to be used to pay for those projects. Commissioner White asked for a report on the progress being made on the improvements authorized in November, and whether the present application contains any racetrack improvements not presented in November.

Mr. Farinella advised Commissioner White that the authorized improvements are in the process of being completed. Those improvements include development of a turf track and dormitories. As part of the overall project, there were additional items that were related to PMR&C's ability to promote the horse industry. Those items included in this project, but were not approved during the original project, are the upgrading and enlargement of jockey quarters, moving and enlarging the saddling paddock and walking ring, complete renovation of the fourth floor of the Clubhouse to provide racing patrons with a first-class environment. This project also includes the public space and transportation within the facilities. Elevators and escalators are necessary to accommodate patron movement throughout the facility. When reviewing their ability to promote their racing program, PMR&C has to provide a facility that will encourage top-notch racing, but also have a facility to attract the racing patrons.

Commissioner Allen asked Mr. Farinella what the cost of the project, as presented was in 1997. Mr. Farinella advised that the November 1997 project is essentially in tact with the exception of the 50,000, four-story administration building. This has been changed to a one-story building, containing approximately 20,000 square feet. He noted that IRGC offices, as well as those of the horsemen's bookkeeper are located in the basement of the current facility, and it is essential that they remain close to the main facility. Moving these offices to the new administration building would allow PMR&C to provide additional space for employee development needs. The overall cost of the project as presented in November was between $37 and $38 million.

Commissioner Allen stated that she did not see any mention of the additional 50 slot machines approved at the November meeting in the current presentation, nor has she seen any mention of them, or the $8 million of improvements that were approved, in any of the recent newspaper articles. She wondered why the project would still cost approximately $30 million if it has been scaled down and the Commission has already approved $8 million of improvements.

Mr. Farinella advised there were two important factors in this project: 1) When looking at construction timing and cost forecasting, the plans are developed with an expected inflation rate based on the time when the commitment is made. When a project is delayed for a year, the costs will be higher due to inflation costs, and 2) there is a common fallacy that by adding another gaming position, more revenue will be generated for the licensee. He stated that when additional machines are added, the first concern should be accommodating the needs of the player, and from a slot player's viewpoint that

revolves around the payback percentage of the machine. PMR&C's goal is to continue to loosen the slot machines to allow a longer playing time for their patrons. He noted the slots at PMR&C are currently 3% looser than they were when the facility opened in 1995. With the additional 50 machines, the continued growth and a more liberal slot machine atmosphere for customers, PMR&C's coin-in and handle have increased over 45%; they are much busier, there is more activity and congestion. The looser slot machines add to the patron's enjoyment, but do not necessarily enhance the track's revenue.

Commissioner Sealock asked Commissioner White if he stated that the Legislature chose to put slot machines on riverboats. Commissioner White stated that his interpretation of the Iowa gambling law, contrary to PMR&C's lawyers, is that riverboats came before the slot casinos at the racetracks. He stated that when the Legislature decided to bring slot machines to the state, it was their preference that they be on the river, reservoirs or some type of water to reconstruct the riverboat days of the past. This is in contrast to Las Vegas and Atlantic City, who decided to put gambling on the shore. He stated that the Legislature decided to put riverboat gambling in the river towns as they were kind of seedy anyway, it wouldn't depreciate their property values. Commissioner White noted that the Commission is mandated to license the slot casinos at the racetracks, whereas the Commission has the ability to deny a riverboat license. In his opinion, the racetrack enclosure licenses were given for a limited purpose – to pay their debt and increase the purses paid, and distribution of the profits if there was any left over. He feels that if Polk County wants additional slot machines, then they need to take the necessary steps to bring a riverboat to Polk County.

Commissioner Allen, noting that Mr. Farinella had mentioned the competition from Osceola and Tama in his presentation, asked him to address the fact that the gaming law was delayed 14 months to allow pari-mutuel establishments to prepare for the competition. Mr. Farinella stated that he could not comment on the delays in implementing the program in the State of Iowa. She asked him if he had any comments about the period of time given the pari-mutuel facilities to prepare for the opening of the riverboats. Mr. Farinella advised Commissioner Allen that he was not in Iowa at that time. He stated that his personal opinion was that the Legislature felt the pari-mutuel facilities would be significantly impacted by the introduction of casino gaming in Iowa, and consequently, gave them that time to prepare for the competition. Mr. Farinella stated that since that time there has been additional legislation recognizing the fact that the pari-mutuels could not continue to compete and protect the agricultural-based industry of horse and dog racing. Therefore, the legislation was changed to allow casinos at the racetracks.

Commissioner Allen, again referring to Mr. Farinella's reference to Tama, stated that the Commission does not have the ability to stop the expansion at Tama. She stated that she does not feel the expansion at Tama has anything to do with the Commission's decision on whether or not to approve additional slots at PMR&C. She doesn't feel it is fair to put that kind of pressure on the Commission members. She noted that the state-regulated casinos couldn't compete with Tama because they are not state-regulated, nor are they

taxed. Commissioner Allen stated that the Tama facility did not bear any consideration in determining whether to allow additional slots at PMR&C.

Mr. Farinella stated that from a competitive standpoint, every licensee has a fiscal responsibility to the State of Iowa. PMR&C maintains their competitive fiscal viability, but also maintains their viability in order to continue to provide for the development of horse racing, protect the jobs of their 1400 employees, and promote tourism in the central Iowa region. In his opinion, if PMR&C can not provide a first class facility and adequate inventory to meet customer needs, then they are doing a disservice to Iowa. PMR&C needs to be competitive, otherwise the competitive forces outside of their control will overrun them.

Chair Peyton asked Mr. Farinella if Polk County had approved the lease between Polk County and RACI, in the form approved by the Commission. Mr. Farinella advised Chair Peyton that all terms of the Lease had been consummated. Chair Peyton again asked if the Lease had been approved. Mr. Farinella stated that the County has not brought the Lease up for additional discussion.

Chair Peyton stated the efforts to address the issue of making improvements to someone else's property are good, and enhance this proposal significantly. He noted that the proposal made to the County states that RACI would be able to recoup some of their investment in the event the facility was sold. Chair Peyton asked if that would also apply to any type of transfer, and was not limited to just a sale. Mr. Farinella stated that RACI has a five-year lease. If the lease were transferred to a third party, Mr. Farinella stated that he felt some of the criteria contained in the Lease approved by the Commission would not apply. He stated that the base rent would apply, but the additional distributions would not go to the new leaseholder. Chair Peyton stated that he was not concerned about what would accrue to the leaseholder, but how the transfer of funds to whomever would impact the licensee, as they would inherit the value of the property that RACI had improved for them. Chair Peyton stated that amortizing the value of the improvements over a ten-year period was a short period of time, particularly for a building. He stated that he was prepared to support that type of provision as long as it was not narrowly limited to a sale. In his opinion, a sale is not going to happen, that it is more likely there would be negotiations on a lease after 2002, which would attempt to place a value on the facility in excess of the value as the property stands today. That value could increase RACI's rent payment in the future, causing them to pay for the improvements twice.

Mr. Farinella stated that he felt the above criteria were administrative issues. From the ownership standpoint, the criteria as to who is entitled to receive the revenue-sharing is set forth in the lease, and is specifically applied to Polk County, and not someone whom they would choose to sublease the facility to, an arrangement that would require Commission approval.

Chair Peyton asked Mr. Farinella what percentage of the gaming losses come from residents of Polk County, the broader circle of central Iowa, and from out-of-state visitors

to the facility. Mr. Farinella stated they estimate that 65% of their activity comes from the immediate area, another 20% from greater surrounding area, and the balance from the tourists in the area for conventions, vacation plans, etc.

Chair Peyton asked Mr. Farinella what the average win per slot per day was at PMR&C. Mr. Farinella advised him that it was just above $300. Chair Peyton asked what a reasonable or expected win per day based on other markets in Iowa and nationwide. Mr. Farinella referred Chair Peyton to the level the industry has sought to maintain. The chart he used in his presentation showed that PMR&C has a level that is two times higher than that found in the other Iowa markets. It is the licensee's goal to provide a sufficient number of machines for peak periods, as well as a significant variety during all periods. When looking at Iowa as a whole, the production level is about half of the production level at PMR&C.

Chair Peyton asked Mr. Farinella how much the charitable contributions would increase with the additional slot machines. Mr. Farinella stated that they had reviewed their contributions, and the commitment made during the hearing held last September was to maximize to the best of their ability. In putting together their program, they have maintained a level of projections for charitables that is given directly by RACI. They also view the funds given to Polk County as a contribution to the social welfare and enhancement of the community. Mr. Farinella noted that all profits, beyond what is required to operate the facility, stay in Iowa. Chair Peyton stated that after reviewing the financials, it doesn't appear that there is any increase in the charitable contributions. In his opinion, Mr. Farinella stated that their commitment is just as good as an increase. Chair Peyton stated that he did not agree with that thought. Mr. Farinella stated that argument could be turned around based on PMR&C's facility, competitive environment and the increasing tax rate, the alternative is that PMR&C will go out of business before 2002, or have a significant reduction in the amount of funds available for charitable contributions. The proposal presented is a hedge to insure that they can protect their commitment to the County, as well as maintaining their own charitable contributions.

Chair Peyton referred to an appraisal of PMR&C prepared by Urban Systems for Polk County to establish a value on the property. They prepared two analyses – one with 1100 slot machines and the other with 1500. After reviewing the report, and taking into consideration the 50 slot machines approved in November, PMR&C, through 2002, would generate $105 million to be distributed to either Polk County or charities. He does not buy into the statements that the facility will not generate enough revenue to pay for the requested improvements. Chair Peyton stated that he does not have any problems with the requested improvements to enhance racing and improve the safety and comfort of the employees and patrons, but emphasized that he does not believe additional slot machines are necessary to pay for those improvements. In his opinion, every dollar lost at the facility is a drain on the surrounding community.

Mr. Farinella stated that the Urban Systems report indicated that any growth or expansion outside of the immediate area, like Tama, was not taken into consideration when preparing the report. He stated that PMR&C has been constrained in providing service

and the ability to grow and satisfy the demands of the public that chooses to go to their facility in contradiction to every other licensee in the state. Mr. Farinella stated that the return to the community and central Iowa from PMR&C has been greater than to any other community in the state of Iowa. He stated there is a significant economic impact and a large degree of economic viability that will be seriously debilitated if PMR&C is not allowed to meet their customers' demands for services.

Chair Peyton took exception to Mr. Farinella's statement that PMR&C has returned more to the state than any other licensee due to the fact that 85% of their customers are Iowans, which is unique among all of the licensees. Out of every dollar lost at PMR&C, 85 cents comes directly from the community, putting them in the hole from the beginning, regardless of whether the tax rate is capped at 24%. For the first dollar lost, 24 cents is paid to the State of Iowa, and that is before paying vendors, various federal taxes, and employment taxes. RACI can only spend the amount that is lost by its patrons. Chair Peyton stated that he looked at the riverboat operations differently than the racetracks because of the different economics involved.

Mr. Farinella stated that PMR&C contributes to the overall entertainment value of the central Iowa area and its ability to attract conventions and aid in tourism. He stated that the statutes that apply to the racetrack enclosures are the same as the riverboats.

Chair Peyton stated that the Legislature defined the structure within which slot machines could be operated at racetrack enclosures. The only restriction on the riverboats is that the machines have to be on the boat. He stated that all of the racetracks have been treated equal, although differently than the riverboats. Mr. Farinella stated that RACI takes the position that they are a gaming licensee in the State of Iowa under the statutes, and does not differentiate from the standpoint of the statute and rules between a racetrack and a riverboat. He indicated they had not been able to find that distinction within the statute, and asked where it could be found.

Commissioner Allen, noting that she asked the same question in January, asked Mr. Farinella if there was any way PMR&C would consider the number of slot machines, and perhaps complete the project over a longer time frame. Mr. Farinella stated that PMR&C always has to keep in mind the fiscal viability and economic stability of the entity. It is their opinion that in order to complete the project and have it paid for prior to the year 2002, the project needs to be completed as quickly as possible. Interest in making the requested improvements will diminish the closer to 2002 it gets. Mr. Farinella stated that PMR&C is unable to meet the demands of their current customers, and to enhance, enlarge and invite additional patrons to the facility through enhanced facilities and restaurants would only make the situation worse. Regarding the number of slot machines, an independent study has shown that even with 1500 machines and 850 in Osceola, PMR&C would still have a higher population density per slot machine than in any other gaming district. Mr. Farinella stated that if PMR&C were allowed to expand to the level of every other operator in Iowa, they would probably have between 2,000 and 2,250 machines.

Commissioner Allen and Mr. Farinella had a brief discussion regarding peak times. She noted that the weekend is the peak time for most businesses in the entertainment business across the country, but doesn't precipitate the building of new establishments just to accommodate those peak hours. Mr. Farinella advised Commissioner Allen that there are two 16-theater developments being discussed, and over 450 new restaurants have opened in Polk County in the last 18 months. He noted that those businesses that are able to expand to work within the increased market are doing so. Mr. Farinella stated that PMR&C is the only gaming and racing facility in Polk County and they are unable to make that investment because of limitations placed on them by the Commission.

Chair Peyton thanked Mr. Farinella for his presentation, and called for comments from the Commission members.

Commissioner Hansen stated that he felt a motion should be made prior to the comments. Commissioner Hansen moved to accept the proposal of PMR&C. Commissioner Sealock seconded the motion.

Commissioner Hansen noted that the pari-mutuel law was passed in 1983, but there were no tracks until 1986. The riverboat legislation was passed in 1991, and slots in 1994. He stated that on February 28, 1995, the Commission recognized boats and tracks as being the same and dealt with them accordingly. Commissioner Hansen advised against trying to put considerable logic into legislative decisions because it is a political body, and the more controversial the issue, less logic appears in the final legislation. Commissioner Hansen outlined his four points in support of PMR&C:

1) Compliance with rule 21.1(3) states that the Commission is to insure that a facility has an efficient, safe and enjoyable environment for the patron. With the current proposed project, less than 10% of the space is slated for gambling purposes, the rest would bring PMR&C into compliance with the above rule.

2) He voiced his concern that the Commission not discriminate against one entity over another. He noted that the average growth of machines has been 66.5% while PMR&C has been allowed 5.8%.

3) When taking the population factor into consideration, the current average is 131 population per machine and PMR&C has 314 population per machine. If they were allowed the additional machines, their population would change to an average of 110 instead of 156. They need to expand.

4) Competition factor. This can not be ignored in making business decisions. He urged the Commission to take the $18 million expansion at Tama into consideration when making their decision. They increased the number of machines by 30% and tables by 33%, for an approximate total of 1400 machines and tables at Tama. He noted Tama operates in a tax-free environment, while PMR&C's tax burden will increase by $15 million over the next five years. Commissioner Hansen stated that it was not realistic to think they should not be concerned about Tama's expansion.

Chair Peyton stated that he was not opposed to the improvements at PMR&C, that they were long overdue. He stated that he felt portions of the proposed project were mandatory in order to insure that the license would remain viable, particularly those areas dealing with the comfort of the patron, the health and safety of the employees, and the racing animal. Chair Peyton stated that he is troubled by the fact that these areas have been represented as being inseparable. He stated that the idea that PMR&C can not generate enough funds to pay for a $30 million expansion is absurd, especially after reviewing financial data in a manner most favorable to PMR&C which shows a minimum of $100 million available. Chair Peyton noted that some of those funds are already committed to Polk County. Chair Peyton reiterated that he is not opposed to the improvements, but is opposed to the concept, by all licensees, of asking the Commission to approve additional slot machines and they will put something back into the community. He stated that he would like to see a licensee state they will give something back into the community, and hopefully our market will grow, necessitating the need for additional slot machines. Chair Peyton made the following points:

1) The Commission has dealt with the slot machine issue twice in the last 8 or 9 months and rejected the request both times. He doesn't see anything significantly different from the previous requests. Instead of bringing the Commission a project justifiable on the fact that the facility needs improvements, the Commission is still being asked to approve additional slot machines.

2) Chair Peyton noted that the Commission has a rule requiring them to review contracts to serve the public interest in order that gaming-related funds are directed to a lawful recipient, and gaming profits are not improperly distributed. The rule also states that the Commission shall approve all contracts that, in their opinion, represent a normal business transaction. The Commission may deny approval of a contract, which in their sole opinion represents a distribution of profits if different from Commission-approved ownership and beneficial interest. He noted that on two different occasions, without regard to the landlord, that when RACI, as the licensee, improves the landlord's property and the value of the improvements extend beyond the term of their lease, then RACI is distributing profits to someone other than the licensee. Chair Peyton gave RACI credit for addressing that issue with Polk County, but stated that he would need to see a broader scope for RACI to recoup some of the costs of the improvements other than just if the facility were sold. He feels that provision is pretty narrow, whether by design or accident. Noting that it is not likely the facility will be sold; he would like to see that provision include the lease of the facility to another party or the sale of the property to any party beyond the terms of the lease. The real problem is that by making the improvements, RACI would be increasing the value of the property, which could cause them to have to pay a higher rent in the future.

3) Chair Peyton stated there is a difference between riverboats and racetrack enclosures. He stated that he respected Commissioner Hansen's comments regarding discrimination, but noted that one man's discrimination is another man's statutory

intent. He noted that the Legislature defined a racetrack enclosure for slot machines. A racetrack enclosure is defined as a facility in which dog or horse racing is conducted. He noted that PMR&C first expansion proposal was labeled as a "casino" expansion. He stated that he didn't think there was any reasonable person who could make the argument that this expansion for the additional slot machines is part of the racetrack. It is his belief that the Legislature chose to discriminate against racetracks.

4) Chair Peyton further stated that he does not feel the expansion is positive economic activity for the community. He noted that 85% of the gambling losses at PMR&C come from the surrounding community. In his opinion, PMR&C is asking the community to provide another 80 cents or 85 cents in gambling losses to be invested in the facilities, which does not benefit the community.

5) Chair Peyton stated that the market at PMR&C is grown at the expense of other licensees. He noted that all studies conducted for the Commission have analyzed the central Iowa market in terms of three facilities – Tama, Osceola and PMR&C. He referred to a study performed by Christiansen & Cummings Associates in July 1995, which stated that a reasonable range in variation for the total market would extend from $120 million to $180 million. It also stated that it was highly unlikely, based on competition and operating conditions, that the combined annual win of the facilities would be as low as $100 million nor as high as $200 million. When you use $318 win per day per slot at PMR&C, deduct half of the figure for the 1,350 machines at Tama, and another 850 minimum at Osceola, you quickly reach the figure of $255 million for the central Iowa market. Chair Peyton noted that the report could be called conservative, but noted that the three facilities are already exceeding the highest estimate of the market by 25%. He is very much aware that the Commission has no regulatory authority over Tama, but pointed out that many horseowners and representatives from PMR&C addressed the Commission during Osceola's application stating that the license would hurt PMR&C facility. He pointed out that any expansion at PMR&C would hurt the Osceola facility, and it is the Commission's responsibility to insure the viability of both facilities. Chair Peyton stated that he did not feel the central Iowa market was large enough to support an expansion at PMR&C and still maintain viable operations at Osceola. He stated that the Commission should give Osceola a chance to at least open the facility before deciding whether or not that is an overstatement. Chair Peyton noted that Arthur Andersen performed a study about the same time as Christiansen & Cummings. Their worst case scenario was $150 million, with the best case scenario at $230 million. This study was also based on three facilities within the central Iowa market. By using PMR&C's projections of $145 million in the 5th year, based on the most favorable of the two studies, PMR&C would need to have almost 2/3 of the market share, which is not a reasonable expectation. Arthur Andersen indicates they would more than likely only have 35-40%, possibly a little more, of the market. In his opinion, the market is extremely constrained, and has to be viewed in a broader light than just win per day per slot.

Chair Peyton concluded his remarks by stating that he could support all of the improvements on two conditions:

1) that the slot machine request is removed entirely for the reasons stated above, and
2) that there is some condition or an amendment to the Lease with Polk County in order to accommodate the Commission's rule on the transferring of profits to a non-licensee.

Commissioner Sealock stated that the documentation supporting the expansion was well done and very compelling. She stated that, for whatever reasons, PMR&C has been dealt with differently. PMR&C has not been allowed by either Polk County or the Commission to operate an enjoyable operation. After touring the facility, it is obvious that PMR&C can not take the same facility, add all of the new equipment and add 900 more people. Commissioner Sealock asked if there was anyone who could show her how a business could obtain a loan from a financial institution and demonstrate to them how the loan would be repaid, then she would vote to make the improvements without adding additional slot machines. She noted that whether or not an individual likes gambling, that is PMR&C's business and how they generate revenue. She agreed that PMR&C does have a large cash flow, but that there are a number of uncertainties that go along with the cash flow. Commissioner Sealock noted that bankers are paying more attention to cash flow rather than collateral. Commissioner Sealock stated that she supported the proposal.

Commissioner Allen stated that she had discovered the essence of the word "time" over the weekend while reviewing PMR&C's request. She noted that "time" is a factor in everyone's life. When the Legislature contemplated a moratorium on gaming expansions, the industry swamped the Commission with requests to add additional slot machines and facilities. Commissioner Allen stated there is no way for the Commission to factor the Meskwaki facility at Tama into their considerations; that there is no way for the Commission to stop them and she doesn't want to be hassled over that issue. With regard to cash flow and profits, she asked the licensees where they were at the beginning of their projects when they had to obtain large loans, Commissioner Allen noted that she had asked PMR&C twice to either consider a smaller project or complete the project over a longer period time. In both instances, "time" is playing against PMR&C, and it is playing against the Commission. In her opinion, the Commission has tried to reach out to PMR&C to allow them to proceed with their project.

Commissioner White stated that he wanted to focus more on the riverboats and racetracks. He noted that when the Legislature passed riverboat gambling, the licensees were to build riverboats recreating Iowa's riverboat history. He noted that a large number of out-of-state gamblers have come to the riverfront towns. He noted that there has been significant riverfront development in those cities with riverboats. Commissioner White, having lived in Ft. Madison and traveled around the Quad Cities areas during the 1970's, stated that he remembered the rivertowns as being seedy but that it was different now due to the riverboats and improvements made along the riverfronts. In his opinion, the riverboats have had an enormous economic impact in the riverfront areas of those communities having riverboats. Commissioner White stated that he feels

the Legislature decided to put gambling in the rivertowns to improve the riverfronts and provide economic development in those areas. He stated there are two types of people he wants to see in the casinos: 1) Those from out-of-state; or 2) Those who would travel to other states to gamble if not provided with the opportunity in Iowa. The gamblers on the riverboats fit these profiles better than the gamblers he encounters at PMR&C. When at PMR&C, he encounters a disproportionate amount of individuals who are from the surrounding communities.

Commissioner White then addressed "latent demand for gambling", which he does not want to occur at PMR&C. He is concerned that an increase in the number of slot machines at PMR&C will create an increase in the number of people playing the slot machines. Additionally, the increase in machines would generate more advertising, which could entice individuals to go to PMR&C who previously have not gambled, even though they may live in the vicinity. Commissioner White stated that he feels PMR&C's market will always be central Iowa, he doesn't picture it becoming a gambling destination like Las Vegas or Atlantic City. He feels that if PMR&C is allowed to expand, they will lose sight of the fact that the slot machines are there to support the horses. Commissioner White stated that he feels the Legislature approved riverboat gambling as a way to attract out-of-state individuals to Iowa to gamble and have an economic impact on the riverfront towns. He indicated that he couldn't make the leap from there to the situation at PMR&C. He stated that there is enough money being taken from residents of central Iowa in gambling losses to make the requested improvements without taking more. Commissioner White noted that the Commission had spent a considerable amount of time dealing with the relationship between RACI and Polk County last year. He indicated that in some ways the economic relationship between Polk County and RACI is the result of negotiations between the two parties even though the Commission did require some changes. The basic structure of $12 million in rent, plus an additional $18 million, more or less, were the direct result of negotiations between Polk County and RACI. These two parties made a decision not to use the available money to make the improvements to Polk County's property, but instead elected to come to the Commission and request additional slot machines.

Commissioner White also expressed concern over the use of PMR&C's slot machines as a substitute for taxation that would normally be based on the ability to pay – sales tax, income tax, automobile sales tax, etc. He is concerned that PMR&C is allowed to increase the number of slot machines, Polk County will use the gambling funds as a way to avoid increasing taxes. Commissioner White stated that the Legislature allowed slot machines at the racetracks as a method of retiring debt and supporting the racing industry, not a change in the way taxes were collected. He indicated this would not have become a problem except for the way in which the Lease was negotiated between the parties. The tax burden is shifted to those less able to pay. Enough is enough.

Chair Peyton, noting that the Chair can not make a motion, respectfully suggested that some, if not all, improvements presented should be made. He stated that it would be irresponsible of the Commission to deny the project in its entirety, and there is some common ground on which a portion of the project could be approved. He noted that it

would be up to the licensee to decide whether or not to proceed based on the economics of the situation. Chair Peyton stated that he would like to see an amendment to the motion that would enable PMR&C to proceed with significant improvements to the property under the conditions he previously set forth.

Commissioner Sealock asked if there was a reason to proceed in that manner rather than voting on the original motion, and then having an amendment.

Mr. Farinella asked the Commission to vote on their request as submitted. Chair Peyton stated that it was the Commission's prerogative to determine how they wanted to vote on the request, and if PMR&C elected not to proceed after the Commission approved a portion of the project, that was their decision. He stated that he didn't feel the Commission was bound to vote on the motion requested by the licensee.

Commissioner White advised Chair Peyton that he concurred with his comments, but did not fully understand what he was requesting. Chair Peyton reiterated that he would like to see the improvements approved, but was not in favor of the improvements being financed by additional gambling losses generated by an increase in slot machines. He also stated that he was not in favor of leaving the motion open to allow for the transfer of gambling dollars to non-licensees. He requested an amendment, if another Commissioner were so inclined, stating that the project would be approved without the additional slot machines, provided there was a satisfactory accommodation of the Commission's rule, 491-1.6, dealing with contract review and the transfer of gambling profits.

Commissioner Allen thanked the individuals in attendance for their patience while the Commission deliberated this issue. She stated that now might be a good time to talk about setting standards on how the Commission will vote in the future regarding requests for increases from the various licensees. Commissioner Allen stated that she would like to be a part of the conditions stipulated by Chair Peyton, and was cognizant of the fact that he could not make the motion. She asked if there was any consideration on the part of other Commission members to allow some expansion at the various facilities.

At this point, Chair Peyton stated that he felt she was going to get into an area of policy as to whether or not the Commission has a written set of criteria concerning expansions, or whether there are some exceptions in which the Commission would allow expansion. He stated that he felt that was an area outside the scope of the amendment he requested. Commissioner Allen stated that she was going to ask if there was a percentage that the Commission could live with in granting this request for PMR&C.

Commissioner White stated that the Commission has deferred until the August 20th Commission meeting a rule governing requests for expansion of slot machines. He stated that he was not in favor of adopting some ad hoc formula at this meeting without any type of notice. He reiterated his agreement with Chair Peyton that the Commission be on record in separating the requested improvements and the increase in slot machines.

Commissioner Allen again asked if there was any support for establishing a percentage at this time, and if not, then she would make a motion.

Commissioner Sealock asked how the Commission could separate the building plans, but take away the means of paying for those improvements. She is concerned about the financial viability of the project. Chair Peyton stated that she is entitled to her argument, but reiterated that he does not feel the additional slot machines are necessary. Commissioner Sealock asked what documentation was available to prove that the improvements could be financed without the slot machines. She noted that when the Commission approves an expansion, they ask the licensee how the expansion will be paid for. She asked how PMR&C would pay for the expansion without the additional slot machines. The only information available to her is based on the additional slot machines.

Chair Peyton, noting there was no amendment on the floor, stated that it was a non-issue at the present time. Commissioner Sealock agreed with his comment, but noted that he had requested an amendment. Chair Peyton indicated that he was simply stating that he would be inclined to support such an amendment, and in the absence of such an amendment being made in short order, the Commission would vote on the motion currently before them.

Commissioner Allen moved to amend the motion on the floor to approve all of the improvements requested by PMR&C, and deny the request for additional slots. Commissioner White seconded the motion.

Chair Peyton stated his understanding of the motion was to amend the original motion by approving the capital improvements without any additional slots. Commissioner Allen stated the above statement was correct.

Commissioner Hansen stated that if the Commission used the above analogy on a first time application, they would have some serious problems with logic. If the Commission were to approve a new riverboat or racetrack without any machines, they would want to know how the facility was going to paid for. Chair Peyton stated that the analogy did not work as this was not an original application. Commissioner Hansen noted that PRM&C is requesting funding for a new structure and the ability to furnish such a facility. He stated that he felt a banker would laugh at anyone coming to them with that kind of proposal. Chair Peyton stated he felt a banker would look at the financial information and see a profit of $100 million over the next five years and extend credit on that basis. Commissioner Hansen stated that after amortizing the improvements, the fund would show a deficit of $4.3 million the first year, $12.3 in the second year, $5.9 in the third year, $658,000 in the fourth year, and a surplus of $1.3 million in the fifth year, for a net surplus of $1.3 million over that time frame. He stated that this is the information PRM&C provided to them, and he doesn't have any basis on which to contradict those figures. Chair Peyton stated he could contradict the figures in the current proposal with the figures presented in PMR&C's last proposal. Commissioner Hansen pointed out that the increased taxes, charitable contributions and a number of other variables could affect

the numbers. Chair Peyton stated the increased taxes would have been included in the presentation given six months ago.

Chair Peyton asked if there was any further discussion. Hearing none, he requested a roll call vote on the amendment to the motion. The motion carried 3-2, Commissioners Hansen and Sealock voting no. (See Order No. 98-118)

Chair Peyton noted that the motion had been amended, and that the motion on the floor was to approve the capital improvements as presented minus the additional slot machines. Commissioner Hansen called for the question. Chair Peyton requested a roll call vote. The motion carried 3-2, Commissioners Hansen and Sealock voting no. (See Order No. 98-119)

Chair Peyton moved to the contract approvals before the Commission. He called on Catfish Bend Casinos (CBC). Dan Kehl, General Manager, presented the following contracts for Commission approval:

- IGT – Purchase of 52 Slot Machines, Add 32 Slot Machines to Existing Casino Floor and Replace 2 Slot Machines (18 Machines Previously Approved)
- Awesome Rental – Purchase of Charcoal Grill (RP)
- United Armor Services – Armored Car Services

Mr. Kehl stated that the Commission has approved a total of 507 slot machines for CBC. They have installed all but 18 of those machines. At this time, CBC is asking to install the remaining 18 machines previously approved and authorization to purchase an additional 34 machines.

Chair Peyton called for any comments regarding CBC's contracts. Hearing none, he called for a motion. Commissioner Hansen moved to approve CBC's contracts as submitted. The contract with IGT includes a Trust Agreement for Wide Area Progressive Slot Machines and an Operating Agreement between IGT and CBC. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-120)

Chair Peyton called on Ameristar Casinos Council Bluffs. Jane Bell, Public Relations Director, presented a contract with Medical Life Insurance Company for payment of life/disability insurance premiums.

As there was no discussion, Chair Peyton requested a motion. Commissioner White moved to approve the contract as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-121)

Chair Peyton called on Mark Lohman, General Manager of the President Riverboat Casino, who presented the following contracts for Commission approval:

- International Gaming Technology – Purchase of 12 Gaming Devices (Replacement)

- MidAmerican Energy – Seven-year Contract as Gas & Electricity Provider
- Williams Gaming Inc. – Purchase of 12 Gaming Devices (Replacements)

Hearing no discussion concerning the contracts submitted by The President, Chair Peyton requested a motion. Commissioner White moved to approve the contracts as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-122)

Chair Peyton called on Greater Dubuque Riverboat Entertainment Company (GDREC). Jim Rix, General Manager, presented the following contracts for Commission approval:

- Andersen Leisure Lines – Line Runs/Group Sales
- Richardson-Buick-Cadillac-Honda-GMC – Vehicles
- AFLAC – Supplemental Insurance
- Gateway 2000 – Computer Equipment
- IGT – Parts, Conversions, and New Slot Machines
- Williams Gaming Inc. – Possible New Machines, Parts and Conversions
- Frank Hardie Advertising – Advertising
- Computerland of Dubuque – Computer Equipment
- BLBA Liquor Store – Liquor Purchases
- Bawden & Associates – Advertising Campaign

Commissioner White asked Mr. Rix about the contracts pertaining to the purchase and possible purchase of new slot machines. Mr. Rix advised Commissioner White that under the current agreement with Dubuque Racing Association, they are limited to 650 slot machines. These machines would be replacement machines. Commissioner White stated that it was his recollection that the agreement between the GDREC and DRA limited each entity to a maximum number of machines. Mr. Rix stated it was determined the market would support 1250 machines, 650 at the Dubuque Diamond Jo and 600 at Dubuque Greyhound Park & Casino (DGP&C). Commissioner White asked if both entities were at their maximum number. Mr. Rix stated he thought that correct, but that DGP&C may be four machines short of their maximum.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner White moved to approve the contracts as submitted by GDREC. Commissioner Allen seconded the motion, which carried unanimously. (See Order no. 98-123)

Chair Peyton called on Lady Luck Bettendorf. Nancy Donovan, General Manager, presented the following contracts for Commission approval:

- Design Build – Renovation of Roger Craig's Sports Bar
- Cam Tech Corporation – Aluminum Slot Stands
- K & K Hardware – Miscellaneous Property Maintenance and Improvements
- Data Business Equipment – Hard-count Equipment and Service
- Mien Graphics – Graphic Design and Illustration

- AC Coin – Slot Chairs, Furniture
- American Hotel Register – Hotel Supplies
- Erwyn Products – Hotel Supplies
- Star Linen – Hotel Supplies (Linens, Towels, Bed Sheets, etc.)
- Crown Home Entertainment – Televisions for Hotel Guest Rooms
- Edward Don – Flatware for Banquet Rooms/Plates for Hotel Restaurant
- Hockenbergs – China for Motel
- US Foodservice – Banquet Facility Equipment and Supplies
- MidAmerican Energy Co. – Gas & Electric Utility Service
- Burns Sports Celebrity Service, Inc. – Celebrity Appearance Booking
- Targeted Specialty Services, Inc. – Hotel Buffet Equipment
- Casino Data Systems – Machine Parts
- Waterway Fine Arts – Mounting and Framing Sports Memorabilia
- Uniforms to You – Uniform Design and Supply

Ms. Donovan advised the Commission there were three contracts that had been withdrawn from the contract submissions made in June: Ecolab, Gear for Sports and Ashworth. With each case, it was determined they would not exceed $50,000 for the year. Three new contracts have been submitted: Edward Don, Hockenbergs, and US Foodservice. These vendors would provide items needed for the banquet and convention space.

Ms. Donovan introduced Jeff Smith, Chairman of Design Build. Mr. Smith advised the Commission that Design Build is an Iowa corporation that is owned by four individuals, and has been located in Bettendorf for 30 years. They attempt to purchase supplies within the area, primarily Iowa, first. If materials are not available, they then locate the closest location to obtain the supplies. He estimated that 80% of the items needed in the Lady Luck project would come from Iowa.

Commissioner White asked if there were any contracts deferred at the June meeting that needed to be considered this month. Ms. Donovan advised there were none. She reiterated that they had withdrawn three of the contracts submitted last month.

Commissioner White noted that part of the reason for the deferral of Lady Luck's contracts the previous month was the fact that the majority of them were with out-of-state vendors. Ms. Donovan noted that Iowa vendors account for 80% of the total expenditures submitted for Commission approval this month.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Sealock moved to approve the contracts as submitted by Lady Luck. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-124)

Chair Peyton called on Southern Iowa Gaming Company. Larry Seckington, legal counsel, presented the following contracts for Commission approval:

- American State Bank – Depository Account
- Veenstra & Kimm, Inc. – Clay Street Project
- Charles W. Gower – Construction of Barge

Mr. Seckington advised the Commission that the contract with American State Bank was entered into over a year ago. He stated that he reviewed all transactions to determine if Commission approval had been obtained on all transactions requiring such approval after being questioned about related party contracts when the real estate contracts were submitted. Mr. Seckington stated that Jim Schipper is the President of American State Bank, as well as the President of the Clarke County Development Corporation (CCDC). He further stated there are three banks in Osceola, Southern Iowa Gaming Corporation will be conducting business with all three, and all three are represented on the CCDC Board. Mr. Schipper has written a letter to Mr. Seckington stating that Southern Iowa Gaming does not receive any special breaks with regard to their account.

Mr. Seckington stated the other contracts being submitted were amendments to contracts approved at the June meeting. He noted that the scope of services on the contracts approved previously was very restrictive, and the scope of services for these two vendors has been substantially expanded.

Hearing no discussion regarding the contracts submitted by Southern Iowa Gaming, Chair Peyton requested a motion. Commissioner White moved to approve the contracts as submitted. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-125)

Chair Peyton called on Bluffs Run Casino (BRC). Doug Okuniewicz, Operations Manager, submitted a contract with Citizens Band d/b/a Citizens Executive Leasing for a Lease Agreement for a 21-passenger Shuttle Bus.

Commissioner White asked Mr. Okuniewicz about the contract with Bergman Incentives, which was deferred at the June meeting. Mr. Okuniewicz advised Commissioner White that BRC had elected not to pursue that particular contract.

Hearing no further discussion, Chair Peyton requested a motion. Commissioner Hansen moved to approve the contract as submitted. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-126)

Chair Peyton called on Bruce Wentworth, General Manager at DGP&C. Mr. Wentworth presented the following contracts for Commission approval:

- Anchor Coin d/b/a Anchor Games – Participation Lease for 22 Slot Machines
- VLC – Participation Lease for 12 Slot Machines

Commissioner Allen asked Mr. Wentworth about the "Both Previously Approved" comment on the agenda. Mr. Wentworth stated that he felt that it referred to the fact that

the Commission had approved a maximum of 600 machines for DGP&C, and these contracts represent the process of putting those machines into place.

Hearing no further discussion, Chair Peyton requested a motion. Commissioner Sealock moved to approve the contracts as submitted. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-127)

Chair Peyton called on PMR&C. Tom Timmons, Vice President of Operations, submitted the following contracts for Commission approval:

- Aristocrat, Inc. – 16 Replacement Mark V 540 27 Coin Slot Machines
- Accurate Mechanical – Heating & Air Conditioning Repairs, Parts & Labor
- Mosler, Inc. – Annual Service Agreement for Currency Sorters in the Soft Count Room

Commissioner White confirmed that the Aristocrat machines were replacement machines. Hearing no further discussion, Chair Peyton called for a motion. Commissioner Hansen moved to approve the contracts as submitted. Commissioner White seconded the motion, which carried unanimously. (See Order no. 98-128)

Chair Peyton moved to the next agenda item, a request for approval of an amendment to a settlement agreement with GDREC. Doug Gross, outside legal counsel for GDREC, stated that the Commission had approved a contract with an investment banker to explore the possibility of the sale of the assets of GDREC. At that time, the Commissioners were apprised of the need to work with staff with regard to past issues to determine whether or not the assets could be sold. GDREC had previously settled a Show Cause Hearing with IRGC; however, the possibility of a future Show Cause Hearing loomed over them. Since that time, GDREC has obtained a District Court Decision that supports the underlying reasons for the Show Cause Hearing. Consequently, Board members feel the opportunity is right to explore the possibility of settling those issues, which would allow them to sell the company. Following negotiations, GDREC and IRGC reached an agreement in which GDREC would pay $8.8 million to IRGC, assuming the buyer could be licensed, as a prepaid penalty related to any violation of the Settlement Agreement or Amendment to Settlement Agreement. This is also contingent on GDREC continuing the current litigation and not settling without the Commission's approval, and no Court finding that William Alfredo had an ownership interest or the equivalent. If all of these contingencies are met, GDREC would get the money back with interest. If there would be a different outcome to the litigation, the funds would be forfeited to the Commission.

Commissioner White stated that it was his understanding that under the original litigation, Mr. Alfredo would not receive any economic benefit. Mr. Gross indicated that was correct. Commissioner White noted that the Amendment allows for a de minimus amount, and wondered what that would be. Mr. Gross stated that the de minimus figure would be determined by the Commission.

Mr. Farrell advised the Commission that Paragraph 4 indicated the funds would be held in a federally insured financial institution. He stated the funds would be held by the State Treasurer in a pool fund, and he was not sure the fund was at a federally insured financial institution. He indicated that he and Mr. Gross had discussed this issue, and that Mr. Gross did not have a problem with the wording, and understands how the fund operates.

Hearing no further discussion, Chair Peyton requested a motion. Commissioner Hansen moved to approve the Amendment to the Settlement Agreement with GDREC. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-129)

Chair Peyton moved to Administrative Business. The first item was a discussion regarding the continuation of the Wednesday evening dinners. Commissioner White expressed concern about accessibility to the public, even though notice is given on the agenda regarding the time and location. He is concerned about compliance with the Open Meetings Law, noting that minutes are not kept. He suggested that another option would be to have a brief meeting in a public location, adjourn and then gather for social purposes.

Mr. Ketterer stated that he felt there might be more of a concern with someone having the perception that the Commission was having an unannounced meeting if all members were seated at the same table in a restaurant. He stated that he felt it was important for the Commission to avoid that perception. He further stated that if anyone has asked to be seated with the Commission during the dinners, they have been allowed to do so. He noted that the Wednesday evening dinners have a history of a being a social gathering rather than a meeting.

Commissioner Sealock asked Mr. Farrell if they were violating the Open Meetings Law. Mr. Farrell stated there were two ways around the law: one is to provide notice as they have been, even though minutes have not been taken. He noted that if there was any discussion regarding racing and gaming matters, minutes should be taken. He indicated that an easier way to comply is to simply avoid all discussion of Commission matters, which would not require any type of notice. He concurred with Mr. Ketterer's statement that the Commission should avoid giving the appearance of impropriety, and could indicate through a notice that they were meeting for administrative or social purposes.

Commissioner White reiterated his concern about accessibility and perception of accessibility, and the fact that it is referred to as a meeting, but no minutes are taken.

Commissioner Hansen stated numerous other Boards and Commissions also hold dinner meetings. He explained that most Commissions are comprised of a group of individuals geographically separated, and the monthly dinner meetings allow them to discuss various problems facing them. He stated that he has never seen one that turned into a strategy meeting, and indicated he was not advocating that. In his opinion, the dinners provide a good opportunity for Commission members to receive additional information forwarded

to the Commission office after distribution of the meeting packets and discuss issues before them. If minutes are required, so be it.

Mr. Ketterer stated that he did not recall the Commission ever being criticized for having the dinner meetings. He stated that precautions are taken to have the dinners in public restaurant, and not behind closed doors. Every attempt is made to insure access to the general public.

Commissioner Allen stated that she recalled one instance in which the Wednesday evening activities were questioned, but nothing ever came out of the inquiry. She stated that she agreed with Commissioner Hansen's comments. She indicated that she did not have a strong feeling on this particular issue. She wondered what would happen if not all members were present at every dinner.

Commissioner Hansen stated that if the Wednesday evening dinners were purely social, he saw no reason for them to be reimbursed for their meals.

Chair Peyton stated that rather than solving the issue of impropriety; the reimbursement issue could make it worse. There would need to be a constant record of what was discussed in order to prove that racing and gaming matters were not discussed and that it was purely social. Chair Peyton stated that unless a Commissioner had a specific motion to offer, he indicated that staff should take the issue under advisement and work with legal counsel to accommodate the concerns raised, particularly the travel requirements of some Commission members.

Commissioner Sealock clarified there was one instance in which there was a concern raised that the Commission was meeting with lobbyists for RACI and PMR&C. She noted that the lobbyists were eating in the same restaurant as the Commission, but they were not seated at the same tables.

Commissioner White suggested that it might be convenient to forego the dinner meeting when traveling long distances to have the meeting. Commissioner Sealock stated that if notice were not given, that would prevent three or more Commissioners meeting for dinner if they arrived at the meeting location.

Chair Peyton reiterated his request for staff and Mr. Farrell to take the matter under advisement, and that the issue would be reviewed in three months.

The second issue under Administrative Business is the change in date and location for the August meeting. Mr. Ketterer stated that the August meeting had previously been scheduled for Wednesday, August 19th in Ft. Madison; but Commissioner White requested that the meeting be moved back to Des Moines. The meeting will now be held at the West Des Moines Marriott on Thursday, August 20th.

Chair Peyton stated that he felt the change required a motion as the Commission had previously approved the meeting dates and locations for the upcoming year.

Commissioner Hansen moved to approve the date and location change of the August Commission meeting. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-130)
Chair Peyton noted that various documents had been referred to during the discussion of PMR&C's expansion request, and asked if those needed to be made a part of the record. Mr. Farrell stated that in the event PMR&C would appeal the Commission's decision, the record could be made at a later date.

Chair Peyton moved to Public Comments. Paul Stanfield stated that in 1997 he served as an unpaid lobbyist for the Iowa Problem Gambling Council and attempted to get the Legislature to make changes to the Iowa Code, which they already thought banned the use of credit cards in casinos. He stated that he appreciated the Commission's action in that area today.

Hearing no further comments, Chair Peyton called for a motion to adjourn. Commissioner White so moved. Commissioner Hansen seconded the motion, which carried unanimously. The meeting adjourned at 3:00 PM.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS
SECRETARY

IOWA RACING AND GAMING COMMISSION
MINUTES
AUGUST 20, 1998

The Iowa Racing and Gaming Commission (IRGC) met at 8:30 AM on Thursday, August 20, 1998 at the West Des Moines Marriott, 1250 74th Street, West Des Moines, Iowa. Commission members present were Brad Peyton, Chair; Jacquelyne Allen, Vice-Chair; and members Rita Sealock, Bill Hansen and Harold White.

Chair Peyton called the meeting to order at 8:30 AM and requested a motion regarding the agenda. Commissioner White asked to reverse the order of agenda items 4 and 5 – Final Adopt Rules and Notice of Intended Action Rules as there were rules being noticed, which if approved, would take the place of the rules to be final adopted. Jack Ketterer, Administrator for IRGC, made the following additions: Under 8F – Belle of Sioux City, add contracts with IGT for Wide Area Progressive Trust and Agreement, 11 replacement machines; and Brinton's for carpeting; and under 8J – Miss Marquette, the agenda item for IGT should show 24 machines versus 15.

Hearing no objections to the changes, Chair Peyton asked if there was any objection to making those changes by unanimous consent. Hearing none, the agenda was approved.

Chair Peyton called for a motion regarding the minutes from the July 23, 1998 Commission meeting. Commissioner Sealock moved to approve the minutes as submitted. Commissioner Allen seconded the motion, which carried unanimously.

Chair Peyton called on Mr. Ketterer to give a report regarding his testimony before the National Gaming Impact Study Commission. Mr. Ketterer noted that the Commission was established by Congress in March 1996, and consists of nine members. The Committee is charged with the task of studying gambling in the U.S., government policies and practices, and more specifically, the positive/negative economic impact, influence upon public policy and political contributions, crime and gambling, assessment of problem gambling, cost and effectiveness of law enforcement and regulation, advertising, Internet and other interactive technology, economic opportunity to depressed areas and Indian tribes, and the effect of revenues on state budgets. The main focus of the meeting in California/Arizona was pari-mutuel and Indian gaming. Mr. Ketterer stated there were over 500 individuals in attendance, primarily union workers and tribal members due to the November ballot issue to authorize casinos for tribes.

Mr. Ketterer stated there were two pari-mutuel panels. The first panel consisted of a track operator, a representative from the Association of Racing Commissioners International, a horse breeding farm owner, the president of the National Thoroughbred Racing Association, and a California legislator who is primarily responsible for the horse racing legislation in California. The second panel consisted of a representative for horse trackmen, a track operator, two gambling opponents and himself. Each individual was given ten minutes to speak, followed by ten minutes for questions. Mr. Ketterer noted

that some of the horse racing interests favored alternative gaming, some did not. All panelists presented factual and historical information about the sport, including economics and regulation. One of the opponents asked the racetracks to commit .1% of profits to problem gambling and the other questioned the number of low paying jobs created by a slots only operation.

Mr. Ketterer advised that his testimony was divided into two areas – 1) educate the Commission about the greyhound industry and 2) provide background on Iowa history, law and experience regarding slots at tracks. His testimony emphasized the following elements of Iowa law: 1) local referendum required; 2) limited to current licensees; 3) revenues used to pay debt, then supplement purses; and 4) designate a portion of the revenue for the treatment of problem gambling.

Mr. Ketterer concluded his comments by indicating that he felt the Commission is comfortable with the role of the pari-mutuel industry. The few questions Commission members asked revolved around slots at racetracks – division of revenues, survival of the tracks, problem gambling impact and the jobs at stake. He stated that he does not feel the pari-mutuel industry is a major issue with the Commission. The main focus of his testimony was that if other states are considering alternative gaming at racetracks, they may want to consider some of the public policy measures contained in Iowa's law.

Commissioner Sealock stated that it was a compliment to Iowa, and particularly Mr. Ketterer, that he was chosen to represent the industry before the Commission. Commissioner Allen concurred with Commissioner Sealock's comments, and asked Mr. Ketterer if he had any comments as to where he felt the Commission might end up, as far as making recommendations. Mr. Ketterer indicated that he did not. He noted the Commission is a very diverse group and line up on both sides of the gaming issue.

Chair Peyton moved to the rules published under Notice of Intended Action. The first item amends subrule 1.6(4) by adding a new unnumbered paragraph to the end. He asked Commissioner White to address this proposed change. Commissioner White stated that this is the ATM rule as it was originally noticed, and defines ATM as a machine where a customer can obtain cash via a debit card from funds already on deposit with the bank. The rule requires the machines to be located in non-gambling areas of the facilities.

Hearing no further comments, Chair Peyton requested a motion. Commissioner White moved to approve the Notice of Intended Action regarding subrule 1.6(4). Commissioner Allen seconded the motion. Chair Peyton requested a roll call vote. The motion carried unanimously. (See Order No. 98-131)

Chair Peyton asked Mr. Ketterer to address proposed changes to subrule 3.11(3) and Chapter 13 by adding a new rule and renumbering existing 491-13.13(99D,99F) through 491-13.25(99D) as 491-13.14(99D,99F) through 491-13.26(99D). Mr. Ketterer stated that these rules are to assist in the collection of student loans. He compared these rules to the ones adopted with respect to the child support recovery unit and enforcing child support payments that all licensing agencies of the state were asked to adopt.

Hearing no further comments, Chair Peyton requested a motion. Commissioner Sealock moved to adopt the rules as proposed. Commissioner Allen seconded the motion. Chair Peyton requested a roll call vote. The motion carried unanimously. (See Order No. 98-132)

Chair Peyton moved to the third item under Rules – Notice of Intended Action, which was to amend subrule 5.1(5) by adding a new paragraph "c". Commissioner White stated that he had asked for a previous amendment to 5.1 to be deferred at the July meeting. The previous amendment would have prohibited any increase in the number of gambling games or slot machines at a racetrack enclosure, but would have allowed substitutions. He noted that since that time, the Commission has received a copy of an Attorney General's Opinion directed to a legislative member concerning the Commission's authority to consider requests for increases in slot machines at both racetrack enclosures and riverboats. The letter suggested the Commission establish some criteria to use in determining whether to allow the increase or not, which this proposed rule change does.

Commissioner White suggested the following changes to the proposed rule as noticed:

1) Subparagraph (3) as published reads: Will result in financial benefit to the qualified sponsoring organization and lead to increased distributions to qualified organizations. Delete "financial benefit to the qualified sponsoring organization and lead to" and add "entitled to distributions under Section 99F.6(4)(a).
2) Add the following paragraph immediately after the list of criteria and prior to the paragraph beginning with "In addition to...": The various criteria set forth may not have the same importance in each instance and other factors may present themselves in the consideration for the increase. The criteria are not listed in any order of priority.
3) As a result of the above change, strike number 10, and move the word "and" from criteria (9) to (8).

Commissioner Sealock asked Commissioner White if he had his proposed changes in writing. Commissioner White indicated that he had been working on the rules the previous evening, and felt it was better to present these changes now so they would be published under the Notice of Intended Action. He stated that the proposed changes do not change the substance of the rule. Mr. Ketterer asked Commissioner White if it was his intention to make these amendments now, versus giving notice of the intended changes. Commissioner White indicated that was correct.

Commissioner White moved to approve the Notice of Intended Action on subrule 5.1(5) as amended. Following a brief discussion on proper procedure, Chair Peyton asked for a motion regarding the proposed changes to subrule 5.1(5) as published and noticed. Commissioner White moved for the adoption of the changes to subrule 5.1(5) as published. Commissioner Allen seconded the motion.

Commissioner White moved to amend subrule 5.1(5) as discussed above. Commissioner Allen seconded the motion.

Hearing no further discussion on Commissioner White's amendments, Chair Peyton called for a roll call vote on the amendment of 5.1(5) as stated by Commissioner White. The motion carried 4-1, Commissioner Sealock voting no. (See Order No. 98-133)

Commissioner Sealock stated that she felt the process was becoming too confusing with all of the changes being made at the meetings.

Chair Peyton then called for discussion on the original motion as amended. Commissioner Hansen advised Chair Peyton that he had some additional amendments. Commissioner Hansen presented the following amendments for consideration:

1) Strike (10) and insert the following in lieu thereof: Fulfills the requirement under 21.13(3) that directs the commissioners to ensure that the racetrack is efficient, safe, and enjoyable.
2) New number 11: Is supported by documented financial condition data that is accepted by the commissioners unless objection to such documents is made by a commissioner prior to the meeting at which the proposal is presented and acted upon.
3) Amend the closing paragraph by adding the following additional paragraph: The commissioners shall respond to each request in a manner consistent with past practices and patterns that they have applied to additional machine requests made by other licensees seeking additional machines. Particular care shall be taken to ensure that the commission's decision is neither unreasonable, arbitrary or capricious.

Commissioner Hansen stated that he is troubled by the Commission's failure to acknowledge competent legal advice provided by the Attorney General's (AG's) Office, as well as other government attorneys. He noted that the AG opinion issued on July 28th talked about approaching the problem on a case-by-case basis. It is his opinion that the proposed rules are "nothing but a prohibition dressed up in designer clothes and that the approval of a request under these rules is as likely as winning the Powerball." Commissioner Hansen continued that he felt the proposed rules are highly subjective and are nothing more than a veiled exclusion.

Commissioner Hansen stated that he had reviewed the AG's opinion issued on May 28th to a legislator, which contained the suggestion of a simple criteria that could be offered and would be subjective. He noted that the suggestion had been ignored in the proposed rules. He noted that his suggestion of establishing such criteria was ignored in January. Commissioner Hansen further stated he was disturbed that the Commission is ignoring the advice of the Legislative Rules Review Committee's legal counsel, which stated the Commission could not ban automatic teller machines or freeze the number of machines. He stated that if the Commission were a Board of Directors of a private corporation, they

would be sued for not following their fiduciary capacity, failing to listen to legal advice provided, and injecting their own legal opinions.

Commissioner Hansen stated that he is troubled by the way the Commission has ignored public events for constitutional overreaching and administrative agency excesses that are being challenged and checked in Iowa and across the nation. He referred to both federal and state instances. He addressed the possible lawsuit against the Commission by RACI with regard to the Commission's rejection of their expansion proposal. Commissioner Hansen noted that Prairie Meadows Racetrack & Casino (PMR&C) has a win rate of $314 while the state-wide average is only $131. He noted the industry has experienced an average growth of 66.5%, PMR&C's has been limited to 5.8%. Commissioner Hansen concluded his remarks by indicating that the above reasons are why he has submitted the proposed amendments.

Chair Peyton called for a motion. Commissioner Hansen moved to adopt his amendments as printed. The motion died for lack of a second.

Chair Peyton called for discussion on the original motion. Commissioner Sealock stated that she had no problem with either of the proposed amendments and they make the proposed changes more palatable. She characterized the proposed rules as "feel-good" rules for someone. She noted that previous rule submissions placed the Commission in the role of legislators, and these rules are turning them into bureaucrats. She wondered why the Commission can't be satisfied with being regulators. In her opinion, these rules will make it harder for a licensee to get additional slot machines than to get their original license. Commissioner Sealock noted that the gaming industry is a highly regulated, competitive industry. Each community and venue is different and they should be allowed to compete the best they can. She noted that every time the Osceola licensee asks for a new slot machine, they are going to have to prove that it will not be detrimental to the horse industry. She wondered how they would do that. Commissioner Sealock noted that the slot machines at PMR&C feed the horse industry, but the slot machines at Osceola would be taking money away from PMR&C. The same theory would apply in Council Bluffs and Dubuque. Commissioner Sealock stated she had no problem making a decision on an independent basis when the Commission had received requests for increases in slot machines previously.

Chair Peyton called for any further discussion. Hearing none, he called for a roll call vote. Commissioner Allen asked for clarification on what was being voted on. Chair Peyton advised that the vote was on the original rule as published with the amendments previously adopted. The motion carried on a 3-2 vote, Commissioners Hansen and Sealock voting no. (See Order No. 98-134)

Chair Peyton moved to the proposed amendments under subrule 5.16(21) – Helmets and vests. Mr. Ketterer stated this rule would require anyone exercising horses on association grounds to wear a safety helmet and vest. The vest has gained popularity within the last five years. The vest is similar to a flak jacket, and is standard gear for jockeys. He noted that most jurisdictions are requiring them for exercising horses in the morning as well.

Hearing no additional comments, Chair Peyton called for a motion. Commissioner Sealock moved to approve the Notice of Intended Action as submitted. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-135)

Chair Peyton moved to the Notice of Intended Action to amend rule 491-20.22(99F) by adding a new subrule. Commissioner White, noting that this rule pertains to requests for additional slot machines on riverboats, moved to adopt the Notice of Intended Action as published. Commissioner Allen seconded the motion.

At this time, Commissioner White stated that he wished to submit similar amendments to 491-20.22(99F) as made earlier to the Notice of Intended Action regarding subrule 5.1(5). Those amendments are:

1) Subparagraph "c" as published reads: Will result in financial benefit to the qualified sponsoring organization and lead to increased distributions to qualified organizations. Commissioner White would strike the words "financial benefit to the qualified sponsoring organization and lead to" and add "entitled to such distributions under Section 99F.6(4)(a).
2) Delete subparagraph "j",
3) Strike the word "and" from subparagraph "i", and insert the word "and" at the end of subparagraph "h", and
4) Insert the following paragraph after "i" and before the paragraph beginning "In addition...": The various criteria set forth may not have the same importance in each instance and other factors may present themselves in the consideration of the increase. The criteria are not listed in any order of priority.

Commissioner White moved to amend the Notice of Intended Action for rule 491-20.22(99F) as stated above. Commissioner Allen seconded the motion.

Hearing no discussion regarding the amendment, Chair Peyton called for a roll call vote. The motion carried 3-2, Commissioners Hansen and Sealock voting no. (See Order No. 98-136)

Chair Peyton called for any discussion regarding the Notice of Intended Action regarding 491-20.22 as amended. Commissioner Hansen expressed his regret that the Commission is dabbling in social engineering and legislative responsibility. He stated he feels the Commission is assembling a political package that is the wrong remedy for individuals with compulsive disorders. Commissioner Hansen referred to a recent newspaper article which indicated that compulsive gamblers also suffer from other compulsive disorders that may manifest themselves in various forms. In his opinion, the Commission is advancing a pretense to the individuals afflicted that these rules will solve a problem when there is a deeper problem requiring the attention of the legislature and help from mental health professionals. Commissioner Hansen stated the proposed rules are a 3% solution to those individuals with a gambling problem, and at the same time, they deny the freedom of entertainment to 97% of the population.

Hearing no further discussion, Chair Peyton called for a roll call vote on the Notice of Intended Action for rule 491-20.22(99F) as amended. The motion carried on a 3-2 vote, Commissioners Hansen and Sealock voting no. (See Order No. 98-137)

Chair Peyton moved to the Notice of Intended Action for subrule 491-26.19(99F) by adding a new subrule. Mr. Ketterer stated this was a clarification of our rules regarding authorized games. He noted that certain games are authorized in the rules, but variations of those games are approved by staff, both for convenience and expediency in introducing the games at the various facilities. Mr. Ketterer stated there has been an increase in the popularity of poker games where the patron plays against the house. He noted that in poker rooms, the players are playing against each other, and the licensee takes a certain percentage from each pot. Examples of poker games played against the house are Let It Ride and Caribbean Stud, and payoffs are made according to pay tables. This rule clarifies that the games are authorized and that any new variations of these types of games can be approved at staff level.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner White moved to approve the Notice of Intended Action regarding subrule 491-26.19 as published. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-138)

Commissioner White moved to withdraw the amendments to rules 5.1(99D) and 491-20.22 listed under Rules – Final Adopt based on Commission action taken under rules – Notice of Intended Action. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-139)

Chair Peyton moved to the next agenda item – a request by Riverbend Regional Authority (RRA) to change the name of the qualified sponsoring organization. Patsy Ramacitti, representing both RRA and Scott County Regional Authority (SCRA), advised that if the change was approved, the necessary Resolution and Articles would be filed with the Secretary of State's office. The Commission received a letter from David A. Millage, legal counsel, indicating that RRA was originally created to hold the license for the Diamond Lady at Bettendorf, which sailed to both Bettendorf and Muscatine. Separate entities were created for Muscatine and Scott County and the revenue received by RRA was distributed to both authorities. The Muscatine and Scott County authorities received their 501(c)(4) exemptions from the Internal Revenue Service at that time, but RRA did not receive its exemption until 1998. When Lady Luck opened in Bettendorf in 1994, the RRA was reconstituted and consisted only of residents of Scott County. The memberships of RRA and SCRA are the same. RRA would like to change its name to Scott County Regional Authority, which would require the present organization to be dissolved. As part of the dissolution, the assets received from RRA will be returned to RRA, which will assume the obligations, which are basically pledges to authorized organizations. The name change will also avoid any confusion with the Riverboat Development Authority, the license holder for The President Riverboat Casino in Davenport.

Hearing no discussion, Chair Peyton called for a motion. Commissioner Sealock moved to approve the requested name change from Riverbend Regional Authority to Scott County Regional Authority. Commissioner White seconded the motion.

Commissioner Allen asked if there were any objections registered regarding the proposed name change. Ms. Ramacitti stated the Board had met on August 9th and the resolution passed unanimously. She reiterated the need to maintain a distinction between the two qualified sponsoring organizations in Scott County.

Commissioner Allen, noting that RRA is a non-profit organization, asked if any public hearings and/or meetings were necessary. Ms. Ramacitti indicated there were not, but stated that the meeting notices and agendas are published, and that this item had appeared on the agenda for two consecutive months prior to taking action.

Hearing no additional discussion, Chair Peyton called for the vote. The motion carried unanimously. (See Order No. 98-140)

Chair Peyton called on Harveys Casino Hotel to present their expansion proposal for the riverboat and land-based facilities. Vern Welch, General Manager, introduced Art Hill, Director of Finance and Controller, who made the presentation. Mr. Hill advised the Commission that Harveys was bringing this proposal to them following numerous hours of study and analysis of the project's impact on their customers, company and community. He noted that, in the past twelve months ending June 30, 1998, visitors to the three casinos in Council Bluffs exceeded the combined home attendance of the Chicago Bulls, Cubs, White Sox, Black Hawks and Bears for the same period. The gaming revenue in Council Bluffs exceeded first year projections by over 70% in 1996. There was a 6% increase in revenue in 1997 without an appreciable increase in supply; and with a small increase in supply, the gaming revenue for 1998 is running a strong 10% over last year, and could exceed the gaming revenue generated in Lake Tahoe. Mr. Hill stated that Harveys feels the 10% gaming revenue increase in 1998, following an increase in gaming supply, demonstrates that new gaming products can still be successfully introduced into the market.

Mr. Hill stated that the master plan sets out where Harveys hopes to be over the next decade. The components of the plan would be completed in future years, based on a variety of economic factors, including continued customer demand, availability of capital, strength of the local economy, and construction cost factors. The first component to be completed will be an enclosed parking garage. Following the completion of the parking garage, Harveys anticipates adding additional convention space, hotel rooms, food and beverage locations, guest amenities and additional gaming positions. Mr. Hill stated that the order in which those components are completed would be based on the merits of each project at the time of consideration. The quantitative elements of the master plan are as follows: 1,475 additional parking spaces, 250 rooms each in two towers – not built concurrently, 516 additional slot machines, 18 additional tables games, and one additional convention/entertainment facility. The plan would enhance Harveys ability to provide excellent goods and services to its current local and out-of-town

customers and expand services to attract larger numbers of state and regional conventions. Mr. Hill stated that Harveys currently stages one headliner concert a month, which requires the entire convention center, leaving no space available for meetings.

Mr. Hill noted that the benefits of the project are many and support a diverse number of people, including contractors and trade workers. As various aspects of the project would become operational, Harveys would experience growth in both its gaming and non-gaming revenue, generating more funds for the Gamblers Assistance Program, the State of Iowa, Pottawattamie County, and the City of Council Bluffs. The improvements would substantially increase the property tax base. The Iowa West Racing Association (IWRA) would have additional funds for distribution to charitable organizations based on an increase in admission fees. Additionally, the project would benefit the vendors and suppliers who provide Harveys with materials for their operations. Mr. Hill stated that letters had been included from various community organizations and institutions supporting Harveys' proposed project.

Mr. Hill addressed the issue of problem gambling. He referred to recent newspaper articles about the amount of money customers have lost to casinos, an average of $35 per person. He asked the Commissioners to remember that, for the majority of the people, gambling is a form of recreation or entertainment. Mr. Hill noted that individuals can easily spend $35 at a golf course, sporting event, concert, or movie. He stated the proposed expansion is an added investment totaling tens of millions of dollars. No business would make such an investment and then jeopardize or eliminate future revenue by bankrupting its customers. Harveys has established prudent check cashing limits, participate in self-bar programs, support the Gamblers Assistance Program, established and actively support Project 21 as a deterrent to underage gambling, work with law enforcement locally and with the state to reduce gaming infractions, and promote responsible actions on behalf of their customers. Mr. Hill stated that Harveys is always seeking new ways to add to or improve those efforts, and support innovative techniques to aid problem gamblers in the future.

Mr. Hill concluded his remarks by stating that Harveys feels the proposed master plan meets the criteria that are reasonable in reviewing projects of this nature, and that it meets many of the criteria set forth in the proposed rules discussed earlier. The plan provides an infusion of capital into the local economy, creates new jobs, adds to tax collections, increases charitable giving, and supports local businesses. He reiterated that the plan has broad community support, and is based on proven demand supported by two years of detailed economic data.

Commissioner Allen, noting that she had asked during the first presentation, again asked if there was a possibility of the first phase of the project being done without the additional gaming positions. She noted that the minutes from that meeting indicated that the decision would be up to upper management. She wondered if that was still the company's position. Mr. Welch advised Commissioner Allen that they are proceeding with the parking garage, and that there is a contract before them during the contract approval portion of the meeting. He noted that the vessel will be required to undergo a

dry dock inspection in New Orleans in 2003, which could take at least 60 days. Mr. Welch stated that he has asked the corporate office to consider that as a target date for a new riverboat, but will continue to try to modify the existing vessel to accommodate customer needs. He stated that corporate has already funded the majority of the parking garage.

Commissioner Allen asked Mr. Welch if the corporate office agreed with the master plan. Mr. Welch indicated they did. Chair Peyton asked Mr. Welch if the corporate office had approved Phases 2 and 3 of the master plan. Mr. Welch stated that there was a corporate board meeting taking place at the present time. He stated they have reviewed and endorsed the entire project, but have not allotted money because costs for each phase have not been established.

Commissioner Sealock stated that one area the Commission always looks at is community support, and that they have obtained a good cross section of community support as indicated by the various letters contained in their written presentation.

Chair Peyton stated that he did not have any problems with the proposed project, but does have a problem with the additional gaming positions. He noted that every time the Commission is faced with an expansion request, the additional gaming positions precede the actual development. He would like to see that situation reversed, and is encouraged by the fact they are proceeding with the parking garage. Commissioner Peyton stated that he does not like approving additional gaming positions based on development that will occur four or five years down the road. He expressed some concern over the size of the market, and the possibility that the situation could arise where one facility is simply pirating business away from the other gaming facilities.

Mr. Welch advised Chair Peyton that on one recent weekend, Bluffs Run Casino was totally packed, and Ameristar was at its capacity, and Harveys' had close to 2000 passengers on its riverboat. He noted that even with the new parking garage, he will only have around 3700 parking spaces for the entire property. Mr. Welch stated that the added gaming positions would help fund some of the components of the master plan. He reiterated his belief that Harveys would need a new riverboat in the near future in order to keep the profits and revenues flowing while the current vessel is undergoing its dry dock inspection.

Mr. Hill stated that Council Bluffs/Omaha is experiencing continued growth in population, personal income and successful business enterprises in the area, which is one of the reasons they are comfortable proposing this type of investment in the area.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Sealock moved to approve the project as presented. Commissioner Hansen seconded the motion.

Commissioner Allen expressed concern over the number of gaming positions in the Council Bluffs area. She indicated that she felt there were over 4,000 slot machines in

the Council Bluffs area, and wondered where the line was to be drawn concerning requests for large increases in the number of slot machines.

Mr. Hill stated that he felt there are only 3400 slot machines in the market. Commissioner Allen concurred that was the number shown on the most recent revenue report. She stated that she had purposely asked, and written down, the response from Harveys, Ameristar and Bluffs Run at the April meeting, and came up with 4,000 slot machines. She stated that she didn't know where the discrepancy was occurring. Mr. Ketterer noted that her figures may have included the additional machines requested by Ameristar in their expansion request.

Commissioner Hansen asked if the Commission had approved Ameristar's request for additional machines. Mr. Ketterer stated that he felt the Commission had approved the expansion concept. Jeff Terp, Vice President of Business Development, advised the Commission that they had approved 30 new machines on the second floor, which would replace two offices, and 320 slot machines, six black jack tables, and a poker room with eight tables on the third floor. He indicated that Commissioner Allen may have used gaming positions instead of the number of slot machines. Commissioner Allen stated that her notes from April showed that Ameristar currently had 1,072 slot machines and 43 tables, and presented a requested approval for 60 slots at the January meeting. Mr. Terp indicated her figures were correct.

Chair Peyton noted that one of the differences between Ameristar's proposal and Harveys' is that Harveys' is actually adding another floor to the vessel. He noted that a little more flexibility exists due to the course of the rules currently being considered by the Commission, nor is there anything to prevent Harveys from coming back to the Commission requesting a larger vessel due to the size of the market. Chair Peyton stated that he is troubled by the tentativeness of the plan, and would prefer to deal with those issues closer to the time that Harveys is ready to make the commitment. He stated his preference to proceed with the existing boat until such time as a bigger boat is necessary. He doesn't like the concept of adding on to the existing vessel.

Mr. Welch stated that if Harveys were to bring in a larger boat, they would keep the same number of gaming positions approved as the larger vessel would provide more room for passengers.

Chair Peyton reiterated that he doesn't have any problems with the master plan, and would be more than happy to see them proceed with the land-based development, but doesn't want to approve slot machines prior to that happening. He stated that he could support a motion that approved the concept without the additional machines.

Commissioner White stated he has a different opinion about additional slots at riverboats and racetracks. He stated that if he were to vote on a motion at this time, he would probably abstain as he wants the rules adopted under Notice of Intended Action to have a chance to take effect. He stated that Harveys would probably do very well under the rules. Commissioner White stated that he does not want to be put in the position of

voting against the project in its entirety. He suggested an amendment to the motion similar to the one made last month regarding Prairie Meadows Racetrack & Casino's request, which was to approve the land-based development without the additional slot machines. He moved to amend the motion on the floor. The motion died for lack of a second.

Commissioner Sealock noted that at the July Commission meeting the Commission unanimously approved additional slot machines at one of the operations without any additional land-based development. She stated that the Commission's inconsistency in handling these requests is confusing and discouraging.

Chair Peyton stated that each request depends on the circumstances surrounding the request, as well as the market, and the magnitude of the request. Harveys' project substantially changes the market. He noted that several of the requests have been for an additional five or ten machines to fill space already available on the boat due to a reconfiguration. Chair Peyton stated that a request for a 30% increase in the number of machines is different than Catfish Bend asking for 30 machines. He stated that just because they have approved other requests doesn't mean they have to approve every request.

Mr. Hill stated while there are differences in volume, that when a licensee requests additional machines it is usually to satisfy customer demand.

Mr. Welch stated that part of the reason for the request was to maintain some parity between them and their competitors. He noted that a majority of their business is from out-of-state. He reiterated that they have had to turn away a considerable amount of convention business due to the lack of either meeting space or sleeping rooms. Mr. Welch stated that the expansion is necessary to meet customer demand.

Hearing no further discussion, Chair Peyton called for a roll call vote on the motion to approve the master plan as presented. The motion was defeated. The vote was as follows: Commissioners Hansen and Sealock – Yes; Chair Peyton and Commissioner Allen – No, and Commissioner White – Present. (See Order No. 98-141)

Following a short break, the Commission moved on to the contract approval portion of the agenda. Chair Peyton called on Roger Hoeger, Assistant General Manager of Dubuque Greyhound Park & Casino (DGP&C), who presented the following contracts for Commission approval:

- City of Dubuque – Amendment to DRA/City Lease Agreement for Racetrack and Casino Facility (RP)
- United Tote Company – Second Addendum to Existing Contract

Commissioner White asked if the Amendment to the DRA/City Lease extended the Lease. Mr. Hoeger indicated that it did not, that the same terms would apply.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Sealock moved to approve the contracts as submitted by DGP&C. Commissioner Hansen seconded the motion, which carried unanimously. (See Order no. 98-142)

Chair Peyton called on Tom Timmons, Director of Operations for PMR&C, who presented the following contracts for Commission approval:

- Accurate Mechanical – Construction of HVAC project
- AT&T – AT&T Network, Uniplan Services
- Burns Electric – Construction of Utility Duct Bank System for Prairie Meadows to off-site Office Location
- Cabletron Systems – Necessary Computer Equipment to Allow for Data Transmission to and from Leased Office Spaces
- Correll Construction, Inc. – Construction of Water Line – Phase 1
- Koch Brothers – Two/Three Copiers and Maintenance Agreement
- KPMG Peat Marwick LLP – Audit and Tax Service
- Septagon Construction Co., Inc. – Construction of two horse barns

Commissioner Allen commended PMR&C for the article that had appeared in the Des Moines Register earlier in the week.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Sealock moved to approve the contracts as submitted by PMR&C. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-143)

Chair Peyton called on Ken Bonnet, President of the Mississippi Belle II (MB II), to present their contracts for Commission approval. Mr. Bonnet withdrew the contract with Catfish Bend Casino with regard to sharing the services of an employee. He also stated that the Commissioners had received requests for approval of a loan from Dubuque Bank and Trust and the transfer of 1909.50 shares of MB II, Inc. stock owned by Dan Kehl. He asked that these be withdrawn as well. He noted that the last two items did not make it on the agenda. Mr. Bonnet stated that all three items were related to a project outside the country, which was not successful. He submitted the following contracts for Commission approval:

- Catfish Bend Casinos – Purchase of Uniforms (RP)
- C. A. Cummins/Cummins Allison Corp. – 1 Jetsort w/Accessories; 1 Coin Wrapper; Service, Parts & Supplies
- Roberts River Rides 401K – Retirement Benefit (RP)
- IGT – Rental of 22 Slot Machines; IGT Progressive Systems (Replacement)

Hearing no further comments, Chair Peyton called for a motion. Commissioner Sealock moved to approve the contract submissions as amended. Commissioner Allen seconded the motion, which carried unanimously. (See Order no. 98-144)

Chair Peyton called on Mr. Terp, who presented the following contracts for Commission approval:

- Aristocrat, Inc. – 10 "Mark 5 Series" Video Games
- Atronic Casino Technology Ltd., LLC – 10 "Desperado" Video Games
- Casino Data Systems – 10 CDS "Extreme" Games
- IGT – Agreement and Trust for 20 Wide Area Progressive Systems Machines (Replacement)
- Iowa Quality Meats, Ltd. – Supplier of Pork Items
- Onthank Co. – Carpet, Fabric and Flooring Supplier
- Paricom – Computer Software and Service
- Potthoff Foods – Fresh Beef and Poultry Supplier
- Sysco Food Service of Iowa – Supplier of Meats, Poultry, Produce and Restaurant Wares
- Williams Gaming, Inc. – 10 Upright Video Games

Mr. Terp noted that five contracts dealt with gaming machines – 30 machines will be new machines approved by the Commission in April. He noted the other five contracts are with Iowa vendors. Mr. Terp advised the Commission that Tony Taubel, Assistant General Manager/CFO at Ameristar, had held a job fair in Des Moines in an attempt to find additional Iowa vendors. Four of the above contracts are a result of that meeting. They hope to hold other job fairs around Iowa.

Commissioner Sealock commended Ameristar on their efforts in this area. She pointed out that Ameristar had also met with produce growers, with the intent of being able to purchase various fruits and vegetables directly from them. Commissioner Hansen also commended Ameristar on the progress made in purchasing products from Iowa vendors.

Commissioner White, noting there are a total of 60 machines being requested, asked where they would be located on the boat. Mr. Terp reiterated that 30 would be additional machines that would be placed in current office space on the second floor. Ten machines would replace machines currently on the casino floor. It was noted that part of the discrepancy could be with the IGT wide area progressive machines, which will also replace machines currently on the casino floor. Commissioner White asked if all of these machines were the result of reconfiguring the second floor. Mr. Terp concurred. None of these machines are for the proposed third floor expansion. Commissioner White asked about the proposal presented to the Commission in April for a third floor deck. Mr. Terp stated the proposal included an additional 320 slot machines, 6 black jack tables and 8 poker tables. He noted that Ameristar has not presented any contracts relating to the construction or slot machines at this time.

Hearing no further discussion, Chair Peyton called or a motion. Commissioner White moved to approve the contracts as submitted by Ameristar. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-145)

Mr. Terp advised the Commission that the Gaming Association of Iowa has taken the job fair concept and intend to hold similar job fairs statewide, particularly in some non-gaming areas.

Chair Peyton called on President Riverboat Casino. Doug Himmelman, Director of Finance, presented the following contracts for Commission approval:

- Great Western Supply Company – General Cleaning Supplies Supplier
- Oriental Trading Co. Inc. – Recurring Purchases of Low-end and Promotional Weekly Give-away Merchandise for Qualifying Club Members
- Ty Inc. – Sole Supplier of Beanie Babies

Hearing no discussion, Chair Peyton requested a motion. Commissioner Sealock moved to approve the contracts as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-146)

Chair Peyton called on John Pavone, General Manager of the Belle of Sioux City (BSC). Chair Peyton noted there were two additional contracts for BSC. Mr. Pavone thanked the Commission for allowing the carpet and IGT contracts to be added to the agenda. He presented the following contracts for Commission approval:

- Argosy Gaming Company – Intercompany Charges for March through June, 1998
- Brintons US Axminster, Inc. – Purchase approximately 3000 sq. yards of carpet for vessel
- International Game Technology – Agreement and Trust for Wide Area Progressive System Machines – To replace existing machines

Commissioner Allen expressed concern over the timeliness of the last two contracts, and referred to Commission rules, which state that Notice of the meeting is published at least five days in advance of the meeting or will be mailed to interested persons upon request. She noted that the contracts were received after the five-day notice. Commissioner Allen, in order to be consistent, stated she was going to vote against contracts not submitted in a timely fashion, but indicated she would be more lenient if a contract was submitted on an emergency basis or was of a compelling nature. She stated that she did not feel these were an emergency.

Commissioner Allen moved to defer the contracts with Brintons and IGT until the September meeting. Commissioner White seconded the motion.

Commissioner White stated that he felt late contract submissions had been approved on various occasions, and that if the Commission intends to change their policy they need to make sure that everyone is aware of the change. He asked Mr. Pavone if there was any emergency surrounding these two contracts.

Mr. Pavone indicated there was no emergency. He expressed some concern over the fact that the carpet requires a 12-14 week lead-time, and trying to meet a deadline of having the renovations completed during the third quarter. Mr. Pavone advised the Commission that with the addition of some new games and renovations, BSC had just set an all-time record for revenues in July. He stated that he understood the Commission's position.

Commissioner White stated that he agreed with Commissioner Allen's earlier statements, but reiterated that if they were going to start enforcing the rule or tighten it up, some type of notice should be given. He also stated that he didn't want to see it enforced if it would cause a serious hardship to the licensee.

Chair Peyton asked Jeff Farrell, Assistant Attorney General for IRGC, if the Commission had the ability to take action on the two contracts. Mr. Farrell asked if the contracts were on the agenda. He was advised that the agenda was amended at the beginning of the meeting. Noting that the agenda had not been amended previously, Mr. Farrell stated that the Commission would be taking action on an item that had not been noticed under the Open Meetings Law. Chair Peyton asked if the fact that contract submissions would be dealt with for this particular licensee was sufficient notice. Mr. Farrell stated that as a matter of practice the Commission has always listed the various contracts to be presented. He stated that he did not feel the contracts were controversial.

Commissioner Hansen stated that at the time the agenda was approved, there were two changes – the reversal of items four and five and the additional contracts for BSC. Chair Peyton reiterated that he was trying to determine whether the Commission has the legal ability to take action on the contracts. Mr. Farrell stated that the issue was not one of parliamentary procedure, but compliance with the Open Meetings Law. He recommended deferral until the next meeting.

Hearing no further discussion, Chair Peyton called for the vote on motion to defer the contracts for the purchase of the carpeting and IGT wide area progressive machines. The motion carried unanimously. (See Order No. 98-147)

Chair Peyton noted that the contract concerning the intercompany charges for March through June 1998 still needed to be dealt with. Commissioner Sealock moved to approve the contract as submitted. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-148)

Chair Peyton called on Mr. Hill from Harveys, who presented the following contracts for Commission approval:

- Casino Data Systems – 10 Replacement Slot Machines
- Mega Jackpots Inc./IGT – Agreement and Trust for 24 Wide Area Progressive Slot Machines (Replacement)
- Thompson Engineering – Surveying, Civil Engineering, Landscape Architecture, Plan Review and Site Preparation Services

- Williams Gaming Inc. – 14 Slot Machines (Replacement)

There was a brief discussion concerning the contract with Thompson Engineering. They are doing the site work for the new parking garage. Mr. Welch estimated the cost to be around $15 million. Commissioner White asked if there was sufficient parking available to patrons and employees during the construction of the new garage. Mr. Welch answered in the affirmative.

Hearing no further discussion, Chair Peyton requested a motion. Commissioner White moved to approve the contracts as submitted by Harveys Casino Hotel. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-149)

Chair Peyton called on Nancy Donovan, General Manager of Lady Luck Bettendorf (LLB), who presented the following contracts and amendments for Commission approval:

- Newt Marine – Dredging Underneath Lady Luck Bettendorf Vessel
- Cummins-Allison Corporation – JetSort Coin Sorters
- King Food Service – Food Service Vendor
- Mikohn Gaming Corporation – Games – Monthly Lease Fees
- Tri-State Tours, Inc. – Bus Subsidy
- Signature Inn – Guest Lodging Packages, Corporate Lodging
- Press and Associates (Howard J.) – Computer Hardware and Software
- Amendment to Operators Contract
- Amendment to Development Agreement

Ms. Donovan advised that the amendment to the Operators Agreement outlines the restructuring of their licensing fee from the current per head tax arrangement and partial percentage tax arrangement based on adjusted gross receipts to one that calls for the licensee fee to be completely funded by a percentage of the adjusted gross receipts. She stated that the second agreement amends LLB's Development Agreement with the City of Bettendorf. This amendment is based on the same concept as the previous amendment, and provides for the restructuring of the development fee payable to Bettendorf. Ms. Donovan stated that all parties involved with the two amendments were very supportive of the changes. From the casino's standpoint, the amendments will allow LLB to enjoy the new land-based facilities, better forecasting and accurate budgeting for tax purposes, and savings of labor costs relating to turnstile issues. She introduced Michael Hirsch, Assistant General Manager, who provided some background regarding the amendments.

Mr. Hirsch advised the Commission that LLB had looked at the total tax paid to other entities for the fiscal year ending June 30, 1998. The total tax was divided by the adjusted gross receipts for the same time frame to determine what percentage of tax they would have paid last year. He stated that for Riverbend Regional Authority (RRA), they would have received just over $2.92 million. LLB's AGR for last year was $73.7

million. When that is converted to a percentage rate, LLB would have paid the RRA 3.96% of their AGR last year. Under the new agreement, LLB will pay RRA 4.10%. Additionally, RRA is guaranteed to receive at least $3 million in taxes in a fiscal year, or approximately $80,000 more than they have ever received.

Mr. Hirsch stated that the City of Bettendorf received just over $1 million in taxes last year, or 1.41% of the AGR. The amendment calls for a percentage tax of 1.65%. The City is protected with a "Floor Amount" of $1,020,000, which is the amount of taxes they received during the last fiscal year.

Ms. Ramacitti informed the Commission that the new agreement between RRA and LLB will benefit the communities they serve. She stated that the Board had given the new agreement serious and lengthy consideration, and feel it is in the best interest of everyone.

Ms. Donovan advised the Commission that the City of Bettendorf had approved the new agreement 5-0.

Commissioner Allen questioned the contract with Signature Inn in light of the opening of the new hotel in the near future. Ms. Donovan stated that LLB does a package program with Signature Inn. She stated that she felt the purpose of this contract was to increase the amount previously submitted and approved. The hotel has housed the players from LLB for quite some time, and a number of them like the facility. It is a limited-service hotel versus LLB's full-service hotel. Ms. Donovan stated that this facility is approximately one and one-half miles from the casino.

Commissioner White noted that the Code refers to an admission fee that cities can adopt. Curt Beason, legal counsel, advised the Commission that under the new concept they are eliminating the admission fee and increasing the development fee.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Hansen moved to approve the contracts and amendments to the Operators Contract and Development Agreement as submitted. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-150)

Chair Peyton called on Southern Iowa Gaming. Larry Seckington, legal counsel, presented the following related party contracts for Commission approval:

- Banta Abstract – Obtain searches on Sellers of Real Estate to be Purchased for the Lakeside Casino & Hotel Project
- Clarke County Publishing – Purchase of Subscription and Periodic Advertising

Mr. Seckington indicated that Banta Abstract is the only abstract company in Clarke County, and Clarke County Publishing is the only local newspaper in Osceola. They have purchased a subscription and will be advertising in the newspaper.

Hearing no discussion regarding the contracts, Chair Peyton requested a motion. Commissioner White moved to approve the contracts as submitted by Southern Iowa Gaming. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-151)

Chair Peyton asked Mr. Seckington for an update on any progress due to all the media reports indicating that nothing is happening at the site in Osceola. Mr. Seckington indicated the reports were correct as to physical activity at the site, but that the company has been holding meetings with architects and engineers for three months. He stated that Southern Iowa has received firm commitments from the architects that they will receive the land-based plans by mid-September. They anticipate having the engineering plans for the utilities, dirt work and paving by September 3rd. If those plans are acceptable, and they receive approval from the Osceola City Council and Water Board, Department of Natural Resources and IRGC, they could proceed with bids and possibly have a contract before the Commission for approval in either September or October. Additionally, they expect to receive construction drawings for the hull and deck of the vessel from the naval architect in late September or early October. Mr. Seckington stated they hoped to have contract on the October agenda.

Chair Peyton called on Miss Marquette. Kim Hardy, General Manager, presented the following contracts for Commission approval:

- IGT – Agreement and Trust for 24 Wide Area Progressive System Machines (Replacement)
- Odney Advertising – Advertising Agency

Hearing no discussion, Chair Peyton requested a motion. Commissioner White moved to approve the contracts as submitted. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-152)

Chair Peyton moved to the next agenda item – a hearing regarding underage gambling violations at Bluffs Run Casino. Mr. Ketterer advised the Commission that BRC management and IRGC staff had agreed to a Stipulated Agreement. He noted there were two separate incidents:

> The first involved a 16-year old who entered the casino while the security officer was occupied with a valet employee and gambled over 5 hours before being discovered. Pursuant to guidelines previously discussed, Mr. Ketterer recommended a $10,000 fine, which both sides have agreed to subject to the Commission's approval.
>
> The second incident involves a 20-year old female who went to BRC with her father. Security turned them away from the casino twice and directed them to the racing facility, however, once there they waited for an opportunity to go to the mezzanine level where she was allowed to purchase two alcoholic beverages without being asked for identification. Mr. Ketterer stated that he felt BRC had

met the standard for security with regard to checking her identification when she tried to enter the casino. He stated this incident would not be before the Commission except for the fact that once they were on the mezzanine level, two BRC employees served her alcohol without checking her ID. BRC has agreed to a $5,000 fine with regard to this incident.

Mr. Ketterer recommended approval of the Stipulated Agreement.

For the purpose of allowing further discussion, Commissioner White moved to reject the Stipulated Agreement. Commissioner Allen seconded the motion.

Commissioner White stated that he had asked Mr. Ketterer for a history of the problems at BRC. He noted that some instances occurred prior to his appointment to the Commission. BRC and IRGC agreed to a Stipulation in January 1997 as a result of multiple incidents of underage gamblers. Commissioner White stated there have been three additional incidents in less than a year – one in December 1997, and the two set forth in the Stipulation before the Commission. He feels these last incidents show a lack of sufficient security personnel and training. Commissioner White stated that he wanted an opportunity to consider the suspension of the racetrack enclosure license for BRC. He would like to hold a hearing to talk with the security personnel and have BRC justify the failure to follow through on previous agreements/promises with regard to security at the facility. Commissioner White stated that he wanted the opportunity to consider a penalty against the management company and determine who is responsible for hiring security at the facility. He noted that the renewal of the racetrack license is coming up, but stated that he is not proposing any action against the pari-mutuel license.

Mr. Farrell stated that if the Commission intends to proceed along this line, they need to consider whether the Commission wants to conduct the hearing as a Contested Case proceeding similar to the one held for the Racing Association of Central Iowa/Prairie Meadows Racetrack & Casino, or if they wanted to delegate it to an Administrative Law Judge. Commission White stated that he felt an Administrative Law Judge could take the testimony and issue a proposed decision/recommendation to the Commission. He stated that he was not aware of a similar pattern at other licensees.

Commissioner Sealock asked Doug Okuniewicz, Operations Manager at BRC, to discuss the problems at BRC in limiting access to the casino. Mr. Okuniewicz stated there are a number of entrances to the main casino, whereas the riverboats generally only have one or two. He stated the biggest problem is the access from the pari-mutuel area to the casino area. He also noted that the riverboats are required to have an area for underage individuals.

Commissioner White countered that PMR&C also has several casino entrances, but doesn't recall similar instances. He wondered if part of the problem was related to compliance with fire code ordinances. Mr. Okuniewicz stated that was correct, but they have removed all of the outside handles except for one set, and a guard is posted there around the clock.

Commissioner White stated that BRC needs to accept the problem, develop a security plan and then hire the necessary personnel to enforce it. Mr. Okuniewicz stated that BRC feels one minor in the casino is one minor to many, even with their unique problems, and they continue to strive to correct the problem.

After a brief discussion on how BRC controls the flow of people going from the greyhound side to the buffet, Commissioner Sealock stated that she felt Commissioner White was stating that the onus is on BRC, not the Commission, to correct the situation.

Commissioner White stated that the process he outlined earlier gives the Commission an opportunity to review what the various parties have to say during a hearing, and staff to review the security plan submitted with the renewal application. He noted that the Commission's rejection of the Stipulated Agreement, at this time, does not mean they may not come back at a later date and approve it. In his opinion, he feels the problem is either incompetent security personnel, insufficient training, or a structural problem.

Commissioner Hansen asked for clarification on Commissioner White's motion. Commissioner White stated that his motion was to reject the Stipulated Agreement. He further stated that he had been advised by Mr. Farrell that such action was necessary in order for another action to be started. Mr. Farrell stated that if the Commission decided to follow another procedure where another penalty would be chosen, then notice has to be served and a contested case proceeding started.

Mr. Ketterer stated that he felt there was a problem in 1996, but since that time they have hired a new security director. He noted that while they had two underage gambling incidents in a year, BRC had 4 million patrons enter their facility in that same time frame. Mr. Ketterer stated that the number of entrances and fire code situation make for a difficult situation at BRC, but concurred with the Commissioners that it is BRC's responsibility to manage the situation. He stated that staff has some concern as to how the Code is to be interpreted with regard to minors at racetrack enclosures. He noted that the statutes under 99F that pertain to the riverboats also pertain to the racetracks unless otherwise specifically excepted. The riverboats are required to have a specific area for individuals under age 21 that is supervised, and staff wondered if the racetrack enclosures needed to have such an area. Mr. Ketterer stated that the tracks had been asked to dedicate an area where minors were allowed at the track. Most allow minors under various circumstances, but that does create some problems as some usually find their way into the casino. He wondered if the tracks should be allowed to ban minors entirely. Mr. Ketterer suggested the Commission might be better served by deferring action on the Stipulated Agreement, reviewing the minor issue in connection with BRC's racing application next month and asking them to present additional material to staff with regard to any deficiencies at the main entrance. If the Commission is not satisfied with the response, they could place some conditions on the license or proceed with a hearing before an Administrative Law Judge.

Commissioner White stated that he disagreed with Mr. Ketterer's recommendation, that there were solutions available to prevent underage gambling, one of which is that every

employee should be checking the identification of anyone who looks underage. Mr. Okuniewicz stated BRC is already doing that and received numerous complaints from patrons about being harassed. Mr. Ketterer stated that past Stipulations have emphasized that one of the thresholds, in addition to the fact the individual has gotten past the security guard, is if there is contact with other personnel without being caught. This indicates that there is not an awareness of the casino's part. He agreed with Commissioner White's comments that every casino employee, from the manager on down, should be watching for underage gamblers.

Commissioner White reiterated his motion to reject the Stipulated Agreement as submitted. Commissioner Sealock asked him if he was amenable to an amendment deferring action and requesting additional information from the licensee during the license renewal process in September. Commissioner White stated that he felt it was more serious than that, and did not want the issue tied to the license.

Commissioner Allen asked Mr. Ketterer to explain how the process would work if the motion to reject the Agreement was defeated. Mr. Ketterer stated that Commissioner White's motion is to reject the Agreement and start the process for a hearing before an Administrative Law Judge, who would set forth the facts and a proposed decision.

Commissioner White stated that if the Agreement is rejected, the issue returns to Mr. Ketterer for further negotiations, etc. In his opinion, if the Commission rejects the Stipulated Agreement, they are indicating they don't like the current proposal.

Chair Peyton called for a roll call vote on the motion to reject the Stipulated Agreement. The motion carried on a 3-2 vote, Commissioners Hansen and Sealock voting no. (See Order No. 98-153)

Following a short break, the Commission addressed a Petition for Declaratory Ruling from Arlen Nichol. Mr. Nichol was represented by Thomas D. Hanson. Mr. Hanson stated that he had spoken with Mr. Ketterer by phone about the Petition for Declaratory Ruling, and that he had not received a response from any of the interested parties. Mr. Hanson stated that the law is clear that Racing Association of Central Iowa (RACI), by allowing the Iowa Thoroughbred & Breeders Association to control access to the purses for the stakes races, is allowing a non-licensee to control gambling proceeds in violation of Iowa Code Section 99F.6. He noted that the Commission has the authority to regulate RACI as a licensee.

Commissioner White referred to the last sentence in Paragraph 3 of the Petition, which reads as follows:

"Petition desires a declaratory ruling that neither Petitioner nor any other owner of a properly documented Iowa-bred horse is required to become a member of IBOTA in order to nominate such horse to race in Iowa-bred races conducted at and subsidized by Prairie Meadows Race Track and Casino."

He stated that his understanding of the request was that:

- Since most of the purse supplement was coming from the gambling revenues, the ITBOA could not restrict access to the Iowa-bred races;

- That the fees being charged by ITBOA should be cost-based, not arbitrarily established.

Mr. Hanson, noting that the amount of the late fee has varied over time, stated that they feel the late-entry fee should be established by RACI, and that it should be cost justified.

Commissioner White stated that he felt this issue would take additional information. He asked who was charging the fee. Mr. Hanson stated that issue was unclear. Chair Peyton noted that if it was the ITBOA, it was outside the Commission's jurisdiction; however, if it was RACI, the Commission would have some jurisdiction. Commissioner White stated that he could support the last part of Paragraph 3 of the Petition. Mr. Hanson stated his client did not have a problem with the late fee as long as it was uniform for all entrants in the race. He further stated they felt it should be RACI, not the ITBOA charging the fee. Commissioner White asked if the purses for the Iowa-bred races was a combination of supplements coming from RACI's slot machines, with a portion coming from the horse owners.

Mr. Ketterer stated that stakes races are races in which the horse owners are putting up entry fees or nomination fees to enter their horse in the race. Stakes races typically have the highest purses at particular racetracks. Some races are restricted, or have early nominations that are required. Typically, nominations occur two-three weeks to a few months prior to the race. Those stakes races requiring early nominations are usually for younger horses. The early nominations help to build purses when there is not a large purse. Mr. Ketterer used the following as a possible fee schedule for a stakes race being held in August: a nomination fee due December 1, which might be very nominal – only $50, another payment of $200 due six months later, another payment of $500 due two weeks prior to the race and $500 to actually start in the race. Those owners who feel they have a chance in the race will nominate their horse early, but those who don't and choose to pay a later supplementary fee will be required to pay a larger amount to enter the race.

Commissioner White asked Mr. Ketterer if 100% of the money being collected was going to the purses or if a portion was being retained by the association. Mr. Hanson stated the entry forms do not specify how much of the fee is going to the purse. He stated they had a problem with the changes in the nomination papers this year which showed an early nomination fee of $50; $100 sixteen months later; two days prior to race - $200, and then an extra $7500 late fee was attached. They have no problem with the $7500 late fee if it is cost-justified or becomes a contribution to the purse.

Nancy Robertson, legal counsel for the ITBOA, stated this was not the proper forum, that the proper avenue would have a Cease and Desist Order in District Court as Mr. Nichol is protesting a rule of the ITBOA, not IRGC. She noted that any declaratory judgment would be binding upon IRGC and the Petitioner, but not a third party such as ITBOA. Ms. Robertson asked the Commission to decline to take action because the Petition presents issues or facts that are otherwise inappropriate as a basis on which to issue a declaratory ruling. She further stated that the Petition does not make it clear that membership in the ITBOA was only required for one stakes race held at PMR&C this year.

With regard to the claim that the fees are arbitrary and capricious, Ms. Robertson stated that ITBOA membership dues are $50 for an individual. She stated that Mr.Nichol could have nominated his horse for the various stakes races for life for a fee of $100 prior to December 1, 1997. After receiving requests asking ITBOA to allow a late payment, the ITBOA Board implemented a policy calling for a $500 supplemental payment to be made prior to March 1, or to allow a payment of $7500 to be made at entry time.

Chair Peyton asked Ms. Robertson who would receive the $7500 late entry fee. She noted that in the past, the fee has always been added to the purse. Chair Peyton asked what the current practice was. Ms. Robertson advised him that ITBOA would keep 15% for administrative costs and the remainder would be added to the purse. Chair Peyton asked her who was requiring the $7500 fee – the licensee or the ITBOA. She replied that it was the ITBOA.

Commissioner White, referring to the Commission's rules pertaining to Petitions for Declaratory Ruling, stated that the rules require the Administrator to draft a proposed ruling that is presented to the Commission for final action. He also requested additional information regarding the "hold back" on the admission fee, and whether or not it was legal.

Commissioner White moved, pursuant to Iowa Administrative Rule 2.8(1) that the Petition for Declaratory Ruling be referred to the Administrator for compliance with the requirements of 2.8(1)(b). Commissioner Sealock seconded the motion.

Chair Peyton asked if there were any time requirements. Mr. Farrell stated the time requirements are intended to get the Declaratory Judgment issued promptly, and there is no remedy provided if the time requirements are not met.

Mr. Farrell advised the Commission that two concerns raised by Ms. Robertson needed to be discussed. He stated that the purpose of a declaratory ruling to apply a statute or regulation to a set statement of facts set forth in a Declaratory Ruling. After reviewing the statutes and regulations, he stated that he did not see any issues that are directly on point. He clarified that he was not implying this request is beyond the Commission's authority, but may be an issue that is more appropriately handled through the rule making process rather than the declaratory ruling process. Mr. Farrell concurred with Ms. Robertson's statement that a declaratory ruling would bind IRGC and Mr. Nichols, but

not necessarily the ITBOA, but stated that matter could also be dealt with in the rule making process.

Chair Peyton called for a roll call vote on Commissioner White's motion. The motion carried unanimously. (See Order No. 98-154)

Chair Peyton moved to Administrative Business. Chair Peyton stated that there had been discussions regarding when a voice vote was appropriate. He stated that the Commission will normally use a voice vote on issues that are non-controversial, but that it is the Chair's prerogative to call for a roll call vote, as can any member of the Commission. He also noted that any member could also request a "Division of the House", which would initiate a count of each member. Chair Peyton advised Commission members that during a voice vote any member wishing to abstain or vote against a motion must make that known to the recording secretary at that time.

As there was no public comment, Chair Peyton requested a motion to adjourn. Commissioner Sealock so moved. Commissioner Allen seconded the motion, which carried unanimously. The meeting was adjourned at 12:25 PM.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS

IOWA RACING & GAMING COMMISSION
MINUTES
SEPTEMBER 3, 1998

The Iowa Racing & Gaming Commission (IRGC) met via a telephonic conference call originating from the Commission's offices located at 717 E. Court Avenue, Suite B, Des Moines, Iowa 50309. Commission members present were: Brad Peyton, Chair; Jacquelyne Allen, Vice Chair; and members Rita Sealock, Bill Hansen and Harold White. The following individuals were also present: Jack Ketterer, Linda Vanderloo, Julie Herrick, Terry Hirsch, Julie Pottorff, and Jeff Farrell.

Chair Peyton called the meeting to order at 9:00 AM as noticed, and requested a motion to approve the agenda. Commissioner Allen moved to approve the agenda as submitted. Commissioner Hansen seconded the motion, which carried unanimously.

Chair Peyton called for a motion to go into Executive Session pursuant to Iowa Code Section 21.5(c) for the purpose of receiving advice from legal counsel on pending litigation. Commissioner White so moved. Commissioner Sealock seconded the motion. The motion carried unanimously on a roll call vote.

Following Executive Session, Chair Peyton moved to the next agenda item – any action, if necessary, in connection with representation by Counsel on matters of pending litigation. Commissioner White stated that, based on the closed session discussions, he did not feel further discussion was appropriate at this time. Hearing no further comments, Chair Peyton moved to the next agenda item.

Chair Peyton called on Jack Ketterer, Administrator of IRGC, for Administrative Business before the Commission. Mr. Ketterer stated that the public hearing was held on Tuesday of this week on the contribution rules regarding the benefit to Iowa residents and also to Commission members being on boards. He noted that there were two individuals in attendance – one representing Council Bluffs and one Iowa West. Comments were submitted which will be forwarded for your review. On Tuesday, September 8th, the Administrative Rules Review Committee meets at 1:00 PM on the Commission's final adopted rules. Mr. Ketterer stated that he was aware that a couple of members did plan to attend that meeting, but reiterated for the record that the Committee did invite the Commission to come.

Commissioner White asked who on the Commission was planning to attend. Chair Peyton indicated that he planned to attend. Commissioner Hansen stated that he might attend, he was not sure at this time. Commissioner White, noting that there have been some split votes on rules, asked which rules were up for final adoption before the Administrative Rules Committee. Mr. Ketterer indicated they were the one regarding the use of a credit card for cash advances and the one for the limitation on the number of licensees. Commissioner White stated that he thought the above referenced rules had

been adopted on 3-2 votes. Mr. Ketterer stated these rules were final adopted by the Commission in July.

Commissioner White asked Commissioner Hansen if he intended to attend the Administrative Rules Committee meeting in order to present his dissenting views if he did attend. Commissioner Hansen stated that if he attended the meeting he would not be making a formal presentation, will listen to what is said and respond to any questions posed to him. Commissioner White stated that his point was that the Commission has adopted rules on split votes, and wondered if the debate would continue before the Administrative Rules Committee. He also asked if Chair Peyton was attending the meeting as the representative for the Commission.

Mr. Ketterer advised Commissioner White that he and Jeff Farrell, Assistant Attorney General for the Commission, would be present at the meeting.

Commissioner White asked if the Commission had received any official communication from the Administrative Rules Review Committee as to their opinion on the rules before them. Mr. Ketterer indicated there had been nothing more than the letter from Joe Royce. Commissioner White asked if that was a public document. Mr. Ketterer stated he was not sure if there was miscommunication between the Governor's Office and Mr. Royce, but indicated that he had talked with Mr. Royce, who indicated that he did not have any problem with his letter being made public.

Mr. Ketterer advised that the Commission will be hearing a presentation from the DCI in Executive Session with regard to Harveys' merger; however, it will not be an action item on the agenda. The presentation will probably take at least 45 minutes to an hour. He asked the Commission members if they would prefer to do the Executive Session at 8:00 AM, or the night before either before or after dinner. He indicated that he had not discussed this option with Gene Meyer, and that this option would be dependent upon Mr. Meyer's ability to get personnel into Des Moines. Commissioner Sealock asked if there was any reason to believe that the Executive Session might be prolonged. Mr. Ketterer indicated that he did not think there would be anything. He indicated that Harveys' does not want the merger on the agenda as there are a couple of issues they need to clear up in other jurisdictions. Commissioner Sealock indicated that she would prefer to hold the Executive Session the night before the meeting. It was agreed that Executive Session would be held after dinner. Mr. Ketterer indicated that he would check with Mr. Meyer regarding the logistics of getting his people in; he stated that he would follow up with the Commission members.

Commissioner Allen, noting that Mr. Ketterer had been visiting the various facilities, asked if he had concluded his visits. Mr. Ketterer stated that he had one this afternoon, but the others were completed. Commissioner Allen asked Mr. Ketterer if he had anything from Larry Seckington, legal counsel for Southern Iowa Gaming Company (SIG), about whether or not Bill Grace, owner of SIG, intends to meet with the Commission at the September Commission meeting. Mr. Ketterer stated that he and Mr. Meyer had talked about meeting with Osceola, but decided not to because they are just

covering operational issues. He stated that he had not heard anything from either Mr. Seckington or Mr. Grace on whether he will meet with the Commission at the September meeting. Commissioner Allen stated that she wanted Mr. Grace to appear before the Commission regarding his intentions for the Osceola project. Mr. Ketterer asked Commissioner Allen if she wanted him to contact Mr. Grace and express her request.

Hearing no further Administrative Business, Chair Peyton called for a motion to adjourn. Commissioner Allen so moved. Commissioner White seconded the motion, which carried unanimously.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
SEPTEMBER 17, 1998

The Iowa Racing and Gaming Commission met on Thursday, September 17, 1998 at the West Des Moines Marriott, 1250 74th Street, West Des Moines, Iowa. Commission members present were Brad Peyton, Chair; Jacquelyne Allen, Vice-Chair; and members Rita Sealock, Bill Hansen and Harold White.

Chair Peyton called the meeting to order at 8:30 AM and requested a motion regarding the agenda. Commissioner Allen moved to approve the agenda as printed. Commissioner Sealock seconded the motion. Chair Peyton noted that the Commission had received a letter dated September 15, 1998 pertaining to the renewal of health insurance policies for employees at Prairie Meadows Racetrack & Casino (PMR&C). He noted the premiums are due October 1, 1998. After a brief discussion, it was decided to take this issue up during PMR&C's license renewal application. Commissioner Sealock stated that if the agenda was going to be amended it needed to be done at this time. Jack Ketterer, IRGC Administrator, stated the contracts could be considered an amendment to the license renewal application. The motion to approve the agenda carried unanimously.

Chair Peyton advised those in attendance that the Executive Session for the purpose of receiving DCI backgrounds had been held on Wednesday evening, September 16, 1998 at 7:30 PM as noticed on the meeting agenda.

Chair Peyton called for a motion regarding the minutes from the August 20, 1998 Commission meeting. Commissioner Allen indicated there was a correction on Page 5, the second full paragraph. The second sentence should read "Commissioner Sealock" not "Chair Sealock". Commissioner Allen moved to approve the minutes as corrected. Commissioner Sealock seconded the motion, which carried unanimously.

Chair Peyton called on Mr. Ketterer to discuss the rules under Notice of Intended Action. Mr. Ketterer advised Chair Peyton that he felt the Commission could deal with all of the rules at one time. He stated Iowa Administrative Rules 491-4.24 and 4.25 were amended by adding "before the Commission". He indicated that he felt "or an Administrative Law Judge (ALJ)" should also be added to the amendments. Mr. Ketterer stated that change was an attempt to distinguish Commission hearings or hearings in front of an ALJ from Gaming Board or Board of Stewards hearings or inquiries. The decisions reached in those hearings may be appealed to the Commission or an ALJ. The third item deals with the relocation of rules to another area of the rulebook and strikes those numbers from the rulebook. Mr. Ketterer stated items four and five are the result of input from the Board of Stewards at PMR&C. These rules establish who is eligible to claim a horse from a claiming race. He noted that previous language was ambiguous. Item 5 deals with the eligibility price of claimed horses. The only change to the rule was the starter allowance and starter handicap language. He recommended that the Commission approve all of the rules as presented under Notice of Intended Action.

Chair Peyton clarified that Mr. Ketterer's recommendation included the additional amendment he made earlier. He stated that it did. Hearing no further discussion, Chair Peyton requested a motion. Commissioner White moved to approve the rules submitted, and amended, under Notice of Intended Action. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-155)

Chair Peyton asked Mr. Ketterer to address the rules up for final adoption. Mr. Ketterer advised the Commission these rules were noticed at the July Commission meeting and pertain to grant distributions and eligibility of recipients from non-profit corporations that may have an IRGC Commissioner as an employee or officer. He noted the Commission had received some comments at the July meeting from Bruce Wentworth, General Manager of Dubuque Greyhound Park & Casino. Mr. Ketterer stated the Public Hearing was held on September 1st with Sam Curley, representing the Council Bluffs Business Association, and Jim Campbell and Tony Payne representing the Iowa West Racing Association, making appearances. Mr. Ketterer stated that the Commissioners had received copies of all documents and minutes from the Public Hearing. He stated that the Administrative Rules Review Committee would look at these rules at their October meeting prior to them becoming effective.

Chair Peyton called for any further discussion of these rules. Commissioner Sealock stated after reviewing the rules and additional information the Commission has received since the last Commission meeting, she feels the Commission has received compelling information from representatives of the communities affected. She noted that some communities would be affected more than others. Commissioner Sealock stated that Mr. Curley had reminded her of a comment made by former Commissioner Dick Canella, who stated that the Commission had a responsibility to listen to the people of the communities most affected by Commission decisions and give their desires more weight in making their decisions. Commissioner Sealock noted that Mr. Wentworth stated that Dubuque felt it was part of a larger community. She further noted that the Commissioners had received a letter from Mary Ellen Chamberlin, of the Riverboat Development Authority, asking why the Commission would write rules to regulate a provision that does not exist. Ms. Chamberlin further stated the regulatory process is critical to the integrity of the gaming industry and should not be encumbered by guidelines, suggestions or philosophies. It is Ms. Chamberlin's opinion that the Commission is trying to take away local prerogative concerning grant distributions and vest the power in the Commission itself. Commissioner Sealock stated that Ms. Chamberlin had indicated concern about the Commission's increased propensity to question the local decision-making process as it relates to disbursement of funds by qualified sponsoring organizations. Ms. Chamberlin stated that one of the strengths of the Iowa casino law is the extent to which local communities are involved in the process and the partnership between the operators and non-profit licensees. She further stated that the non-profit licensees had always considered themselves to be partners with IRGC to assure a quality product. In her opinion, some of this is being lost with these rules. Commissioner Sealock stated she was disturbed by Ms. Chamberlin's closing comments, as she has been involved with the President Riverboat since the beginning.

Commissioner Sealock then reviewed a letter received from Mr. Curley, which indicated that Council Bluffs is considerably different than some of the other communities in the state due to its proximity to Omaha, Nebraska. She noted that approximately 70% of Council Bluffs' heads of households work in Omaha. Mr. Curley stated that the mutual dependence of Council Bluffs and Omaha on each other becomes most evident in the community commitment of each city toward helping the other to achieve goals. He feels these rules will ultimately transfer approval of grant distributions to the Commission.

Commissioner Sealock expressed her concern about the necessity for these rules unless Commission members want the opportunity to read grant applications. She indicated that she felt it would be inappropriate for the Commission to read the applications and that it was outside of the Legislature's intent.

Commissioner Hansen stated that he supported Commissioner Sealock's comments. He stated that he felt the rules represent micro-management on the Commission's part and will continue to oppose the rules.

Commissioner White stated that the Commission should not lose sight of the fact that it is a state agency charged with regulating gambling. He noted that local decisions are important, but there needs to be a balance between local decisions and state regulations. He questioned why the licensees have a problem with the proposed rules if they are already doing what the rules would require. Commissioner White stated the rules would serve as a reminder to the local communities that the purpose in bringing gambling to Iowa was to benefit Iowans.

Chair Peyton stated that if the proposed rules required the Commission to micro-manage or review grant applications he would not support the rules. The rules simply require the licensee, or the non-profit, to consider what impact the grant would have on Iowans. He noted that the Commission does extensive micro managing in reviewing contracts and sees no reason why that should not occur in a less visible fashion with the grant distributions. Chair Peyton stated that he does not feel the rules are contrary to statutory intent, but implement statutory intent.

Commissioner Hansen noted that statute requires a majority of the purchases made by the licensees be made in Iowa, wages are to be 25% above the federal minimum wage and that a majority of the employees must be Iowans, but does not address the grants distributed by the non-profit licenses.

Chair Peyton pointed out that Iowa Code Section 99F.6(4)(a) states: "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 and shall distribute the receipts for educational, civic and public, charitable, patriotic or religious uses as defined in Section 99B.7(3)(b), which indicates those are to serve Iowa residents. Commissioner Hansen stated that he feels the above code section merely describes the types of associations that are eligible to receive funds.

Commissioner Allen stated that she planned to vote for the rules. She stated that she does not see them as a threat to bona fide recipients of grant distributions. She further stated that she would not be asking to review grant distribution applications; that it is up to the non-profit organization to determine which organizations will be receiving funds. Commissioner Allen indicated that she does not foresee a significant change in how the funds are distributed, but feels the Commission would be remiss in not offering guidelines and directions on this issue as the funds are being distributed in Iowa.

Commissioner Sealock, noting that she has served with eleven different commissioners, stated that regardless of how she interprets these rules, there is no way of determining how future commission members will interpret these rules. She feels the rules open the door for future commission members to ask to review all grant applications.

Chair Peyton stated that he wanted to handle the two rules up for final adoption separately. He called for a motion regarding the amendment to rule 20.11(6)a(2) – Grant Distributions. Commissioner White moved to approve final action on rule 20.11(6)a(2). Commissioner Allen seconded the motion. Hearing no further discussion, Chair Peyton requested a roll call vote. The motion carried on a 3-2 vote, Commissioners Hansen and Sealock voting no. (See Order No. 98-156)

Chair Peyton called for a motion regarding the amendment to rule 20.11(6) by adding new paragraph "d" and "e". Commissioner White moved to final adopt the amendments. Commissioner Allen seconded the motion. Hearing no further discussion, Chair Peyton requested a roll call vote. The motion carried on a 4-1 vote, Commissioner Hansen voting no. (See Order No. 98-157)

Chair Peyton moved to the hearing for Bluffs Run Casino (BRC) for a violation of Iowa Code Section 99F.9 (Wagering – Age Restrictions). Mr. Ketterer stated the matter was deferred at the August meeting due to a concern by some Commissioners about obtaining additional information relative to the issue. He noted that staff had documented the underage gambling violations before the Commission, and requested information from BRC with respect to the actions they were going to take to prevent this situation from occurring in the future. Staff suggested BRC talk with other licensees to determine whether there were procedures they were using that would be beneficial to BRC. Mr. Ketterer stated that he had decided not to change the proposed Stipulation that was presented at the August meeting. He noted there was some discussion as to the possibility of a review by an ALJ. As there was no dispute as to the facts set forth or the violation of the law, the only issue was the penalty. Mr. Ketterer stated that he had relied on the guidelines discussed at the March meeting in determining the penalty. He stated that if the Commission decided to change the amount of the penalty that they specify that a change is needed in the guidelines or that extraordinary circumstances came into play in this particular situation. Mr. Ketterer stated the Commission could instruct staff to amend the Stipulated Agreement, and if BRC agrees to the amendment, the Stipulated Agreement could be executed without coming before the Commission at the October meeting. If BRC didn't agree with the amendments, they would be entitled to a hearing regarding the merits of any changes. He reminded the Commissioners that the guidelines

established were based on the number of patrons visiting a facility during the year and; therefore, the number of patrons that need to be screened by the licensee. The tiered penalty increases according to the number of violations that occur in a particular year. Additional criteria taken into consideration are whether or not the individual is asked for ID; in the casino for more than 30 minutes; and either purchase alcohol or actually gamble; therefore, coming into contact with at least two casino employees. The Commission is attempting to make the licensees aware this is not just a security issue, but an awareness issue for all employees. Mr. Ketterer stated that the guidelines do not prevent the Commission from taking additional action if they feel there are extraordinary circumstances involved in a particular incident.

Commissioner White noted that the August meeting agenda listed this issue as a hearing, and Mr. Ketterer presented a Stipulated Agreement that would have resolved the issue; however a motion was made, and passed, to reject the Stipulated Agreement. As no notice has been given regarding a contested case hearing, he does not feel the Commission can proceed with a hearing. Additionally, Commissioner White referred to material given to them for the August meeting, which contained a Stipulation from September 1996 listing numerous violations, but left the penalty open for the Commission to determine. He asked if such a stipulation was before the Commission today.

Mr. Ketterer indicated no such stipulation was before the Commission today. He stated that the reason the Stipulation was characterized as a hearing is that the Stipulation is an opportunity to resolve the matter. If the Commission does not approve the Stipulation, then he feels the matter would have to be noticed and set for a contested case hearing. Mr. Ketterer noted that in the 1996 Stipulation, there were several violations that occurred within a very short period of time. At that time, the Commission did not have any history on which to base penalties, and he did not feel comfortable proposing a penalty. This is what led to the guidelines. In that way, there would be some expectations by Commissioners and licensees, and provide guidelines to staff in proposing stipulations.

Commissioner White stated that there was no stipulation of any kind at this time. Mr. Ketterer stated that the parties had stipulated as to the facts, the violation of the law, and the penalty, but that it is contingent upon approval of the Commission. Commissioner White stated that was his point – that the Stipulation is an entire package that was rejected previously by the Commission. Mr. Ketterer stated that if there was something the Commission wants to change that they so advise staff so that a new stipulation can be entered into, if BRC is agreeable with the changes. If BRC doesn't agree with the changes to the penalty area, then it would be necessary to have the hearing.

Commissioner White stated that he was concerned about preserving the Commission's decision-making ability. He stated that he would be more comfortable with the situation if BRC would enter into a stipulation similar to the September 1996 Stipulation; therefore, agreeing to the facts, attaching exhibits and allowing the Commission to establish the penalty. Commissioner White stated there are documents he would like to

see included in the record. He stated that he would rather not take action on this matter today.

Chair Peyton stated that he felt the Stipulation had been rejected on the grounds that the penalty was too light based on the circumstances set forth. He suggested the matter be continued and brought back before the Commission.

Commissioner White stated that if the licensee was not willing to stipulate to the facts and admit the violation, steps should be taken to establish a hearing. Chair Peyton stated he was suggesting that another attempt be made to enter into a stipulated agreement. If the licensee is not interested in a higher penalty, then the Administrator should proceed to issue notice of a contested case hearing.

Mr. Ketterer asked if the current proposed Stipulation, minus the penalty, was adequate. Commissioner White stated that scenario seemed to work previously.

Commissioner Sealock asked Commissioner White if he was suggesting the guidelines staff has been using are unsatisfactory. Commissioner White stated the guidelines do not adequately address the current situation with the underage violation, which is why he moved to reject the Stipulated Agreement.

Commissioner Hansen stated that he was confused as to what Commissioner White was trying to achieve – hold a hearing or revise the guidelines. Commissioner White stated that the Commission had rejected the Stipulation in its entirety, so they have nothing to act on. In his opinion, the Commission has three options:

1. A complete stipulation acceptable to the Commission in its entirety, which is not available at this time;
2. The licensee can request a hearing on the entire matter, or
3. A written stipulation similar to the one entered in September 1996 where the licensee admits the violation but the Commission holds a hearing on the penalty portion, preserving the right of judicial review of the penalty.

Commissioner White reiterated his concern that if the Commission discussed the merits of the case, they would interfere with their right to make a decision. Commissioner Sealock stated that it was unfortunate he did not raise his concerns previously. Commissioner White stated they were raised at the August meeting, that a discussion was held about the various options available to resolve the issue.

Mr. Ketterer asked Commissioner White if it was his intent to have the matter go to a contested hearing. Commissioner White stated his preference would be for the licensee to admit the violation and have a hearing on the penalty portion next month, preserving judicial review as was done in September 1996.

Jeff Farrell, Assistant Attorney General, stated that the Stipulation is before the Commission again and Doug Okuniewicz, Director of Operations for BRC, is present to

present additional information that may assist them in making a new decision on whether or not to accept the Stipulation. If the Commission still rejects the Stipulation, Mr. Farrell recommends giving notice to begin a contested case proceeding, keeping in mind the possibility of reaching a second stipulated agreement as a means of resolving the contested case proceeding.

Commissioner White stated that the Stipulated Agreement was rejected last month and the reasons for doing so are the same – the circumstances are outside the Administrator's guidelines.

Mr. Farrell stated that the issue was over the amount of the penalty, not the facts surrounding the violation. He recalled Commissioner White stating that if he heard all of the facts underlying BRC's efforts to control or prevent a similar situation from reoccurring in the future, it was possible the Commission might accept the proposed Stipulation. He suggested the Commission hear Mr. Okuniewicz's comments.

Commissioner Allen stated that she wanted to hear what Mr. Okuniewicz had to say. Commissioners Hansen and Sealock concurred.

Mr. Okuniewicz asked the Commissioners if they had received the information he submitted to Mr. Ketterer earlier. He stated his presentation would try to demonstrate steps taken to curtail underage gambling at BRC. He noted that BRC experienced a 56% decline in the number of violations during the second half of 1997 over the first half of 1997. They are on pace to have a 50% reduction over 1997 in 1998. Mr. Okuniewicz stated that a minor violation could be as simple as an individual walking through the doors with an infant in their arms. They don't count in the criteria toward stipulations, but are counted when counting those that are carded, turned away, etc. He noted that BRC is on pace to card approximately 100,000 people in 1998. Mr. Okuniewicz stated that BRC has taken underage gambling seriously for quite some time. They have requested additional Council Bluffs police officers to be placed at the front entrance as a visual deterrent and to help identify underage individuals and those with false identification. Mr. Okuniewicz stated that he felt BRC compared favorably with the other licensees with regard to the steps taken to prevent underage gambling, but acknowledged their weakness of having too easy an access from the trackside to the casino. He stated that he does not feel the facts in the present situation are substantially different from previous stipulated agreements approved by the Commission.

Chair Peyton asked if Mr. Okuniewicz had presented enough additional information that a Commissioner wanted to move to accept the Stipulated Agreement presented at the last meeting. Commissioner Sealock moved to approve the Stipulated Agreement. Commissioner Hansen seconded the motion. Commissioner Sealock stated that she is concerned about consistency in how the licensees are treated. She indicated that she has no objection to Commissioner White requesting a copy of the incident report, but feels it is the only time a copy of the incident report has been requested. She agreed with Commissioner White's earlier comment that the final paragraph with the guidelines does give the Commission the ability to look at each case individually.

Commissioner White asked Commissioner Sealock how the Commission could act on a Stipulated Agreement without reviewing the underlying documents, that the Commission can not totally rely on the Administrator to provide them with the facts and do their job. He noted the Stipulation indicated the minor had contact with several employees, and had asked how many "several" was. At that time, he asked for a copy of the incident report if one was available. Commissioner Sealock stated the Commission should ask for supporting documentation on all Stipulated Agreements. Commissioner White stated that he intended to do so.

Commissioner Allen stated that she has always tried to treat all of the licensees as fair as she knows how. She stated that she does not fully agree with the guidelines presented by Mr. Ketterer at the March meeting. She noted that the smaller licensees are fined $10,000, $15,000 and $20,000 each for the first, second and third violations, while the larger licensees are fined $10,000 for the first two violations, $15,000 for the third and fourth violations, and $20,000 for their fifth and sixth violations. Mr. Ketterer advised Commissioner Allen that half of the riverboats have admissions that are 2 million and above while the other half have 1 million or lower. He noted that the larger vessels have 2, 3 or 4 times the number of patrons to screen as the smaller riverboats; therefore, the requirement should be on the number of patrons screened.

Chair Peyton reminded the Commission that the guidelines are not carved in stone and have not been formally adopted. They are to serve as a guideline for staff. After reading the Stipulated Agreement and assuming the facts were true, he felt the fine was extremely light, particularly in the case of the underage gambler. He noted that the facts as set forth in the Stipulated Agreement show the minor was in the casino for 5 ½ hours, gambled throughout the casino, a security guard had left his post, and that the minor had contact with several casino employees. Chair Peyton stated that BRC's security problems are not the responsibility of the Council Bluffs Police, or the DCI, but the responsibility of BRC as the licensee. He further stated that if BRC does not have sufficient security staff, then they should take some of the profits and hire additional staff. He reiterated his belief that the $10,000 fine is too light in lieu of previous incidents, and that the circumstances surrounding the violation are outside the guidelines used in determining the penalty in these circumstances.

Commissioner White advised Mr. Ketterer that the proposed penalty did not even conform to the minimum guidelines. The Stipulated Agreement covers the second and third violations within a year regarding underage gamblers at BRC. He noted that BRC was fined $10,000 on December 15, 1997, and according to the guidelines, the second violation would be $15,000 and the third violation would be $20,000, for a minimum penalty of $35,000. Mr. Ketterer advised Commissioner White that BRC was fined $10,000 for the first incident, and the current Stipulation involves two incidents – one was the $10,000 for second underage violation within a year. Mr. Ketterer advised the Commission that he did not consider the issue with the 20-year who was served alcohol as a full issue and would have passed on it since BRC had followed the proper procedures in preventing her from gaining entrance to the casino initially. Since the 20-year did eventually get into the casino with her father, Mr. Ketterer stated that he felt bar

employees had a responsibility to check her ID before serving her alcohol, which is why it was brought to the Commission. He is recommending a $5,000 fine with regard to this incident.

Commissioner White reiterated his comment that he did not feel the guidelines had been followed in establishing the penalty set forth in the proposed Stipulated Agreement. Mr. Ketterer stated that those individuals who enter the casino with false identification are not brought before the Commission, as the Commission does not hold all security guards to being able to identify every false ID. Mr. Ketterer reiterated his previous comment that the Commission either needs to establish different guidelines, or they can treat the current situation as an extraordinary circumstance if they like the current guidelines, but need to declare which way they are going to go so that everyone knows what to expect and bring to the Commission.

Commissioner White again stated that he was considering the 20-year old being served alcohol as a second violation within a calendar year, which would require a $15,000 fine. The third violation is the 16-year old that was allowed to gain access to the casino and gamble for 5 ½ hours, which would be the third violation within a year requiring a $20,000 fine; therefore, the minimum penalty set forth in the Stipulated Agreement should have been $35,000.

Chair Peyton stated that the previous discussion only serves to illustrate how difficult it is to apply the guidelines to every situation. He reiterated his belief that the circumstances set forth in the Stipulated Agreement at the last Commission meeting and presently before the Commission fit the guidelines. He stated that he did agree with the guidelines and lets individuals know what to expect, but is aware there will be some situations which will fall outside the guidelines, and this is one of them. Chair Peyton stated that he would prefer the parties go back to the drawing board and that the fine be stiffer. He noted that suspension of the license had been mentioned as a possible remedy at the August commission meeting. He stated that he did not believe that this situation warrants that kind of action at this time but could in the future if violations continue to occur. Chair Peyton stated that some action has to be taken to prevent the continuation of this type of violation. Mr. Okuniewicz agreed, and stated that BRC has made vast improvements in this area on a year to year basis. Chair Peyton noted that BRC has some unique problems at their facility due to the structural design of their building that may need to be addressed before the underage problem can be completely resolved. He noted that in cases involving liquor licenses, the penalties are much stiffer than what the Commission was proposing, usually the liquor license is suspended.

Commissioner Allen stated that she was encouraged by the fact that BRC was trying to strengthen its security force. She noted that while reviewing the history surrounding the underage gambling problem at BRC, she found a memorandum dated October 1, 1996 regarding minors in the casino. She asked what was recommended then that is being done differently now because the memo sets forth procedures being instituted by the security department to help guard against minors entering the casino. Those procedures included retraining all security officers; placing law enforcement officers at the main

north entrance during peak hours on Friday and Saturday; and adding additional security officers to the main north doors during peak hours on Friday and Saturday. She wondered what would be different now. Mr. Okuniewicz advised Commissioner Allen that the procedures just outlined only referenced two of the main entrances into the casino. Those procedures have been expanded to encompass all of the entrances into the casino. He stated that it is BRC's goal to have no minors get into the casino. BRC does have a zero-tolerance policy with regard to minors in the casino.

Commissioner Hansen stated the following facts as he understood them from the previous discussion: that Chair Peyton feels the fine is too low; and Commissioner White wants a greater in-depth review of supporting documents. Commissioner Hansen stated that he disagreed with Commissioner White on this issue and feels staff is competent and able to make recommendations to the Commission. It is his opinion that the Commission should ask the Legislature to invoke heavier fines on teenagers in the areas of gambling and drinking.

Commissioner Allen asked Commissioner Hansen if he was suggesting the matter could be resolved today. Commissioner Hansen stated that if the Commission wants a stiffer fine, put it on the table and see where it goes. He stated that he felt Commission members were putting an impossible burden on Mr. Ketterer to determine what it is they want. Commissioner Allen asked him if he was going to suggest a stiffer fine. Commissioner Hansen noted there was a motion on the table, but that it could be amended.

Chair Peyton stated that he did feel the Stipulation could be amended, that the Commission either has to accept or reject the Stipulated Agreement in its entirety. If the Stipulation is rejected, the Commission would direct staff to serve notice for a contested case hearing, and that during the course of the hearing, it is possible to negotiate a different stipulated agreement that might be acceptable to Commission members. Chair Peyton stated that he did not want to negotiate a penalty during a Commission meeting.

Commissioner Hansen asked Mr. Farrell if he was stating that the Stipulated Agreement before them could not be amended. Mr. Farrell stated that the Stipulation was an agreement between Mr. Ketterer and BRC and the Commission can not approve something different than what they agreed to unless the parties agree to an amendment.

Hearing no further discussion, Chair Peyton called for a roll call vote on the motion to approve the Stipulated Agreement as presented. The motion was defeated on a 3-2 vote, Chair Peyton and Commissioners Allen and White voting no. (See Order No. 98-158)

Chair Peyton asked if anyone wanted to suggest the next course of action. Commissioner Allen recommended a higher penalty. Commissioner Hansen asked if she had a specific amount in mind.

Chair Peyton called on Mr. Farrell for his comments. Mr. Farrell stated that the Commissioners have made their thoughts known, and everyone has heard them. As part

of the contested case hearing, additional facts may be discovered. The parties could negotiate another Stipulated Agreement to be presented to the Commission, or the case could actually go to a hearing before an ALJ, who will recommend a penalty or license suspension. The ALJ's decision could be appealed to the Commission. Commissioner Allen withdrew her motion.

Commissioner White noted that Mr. Ketterer made some distinctions in his comments regarding various circumstances that were not covered in his memo setting forth the penalty guidelines. Mr. Ketterer noted that every situation is going to be different. He stated that he established the guidelines because the Commission and licensees had indicated a willingness to accept Stipulated Agreements as a way to deal with these issues as opposed to going through a contested case hearing. Mr. Ketterer further stated that it was impossible to set forth every detail in a guideline, which is why he included the paragraph about exceptional circumstances.

Based on the previous discussion, Mr. Ketterer stated that future stipulations, if the Commission is still receptive to them, would set forth the facts surrounding the violation, but would not contain a penalty recommendation. The licensee would have an opportunity to ask for judicial review if they don't agree with the Commission's penalty.

Chair Peyton restated where the Commission was at on this issue. He stated that the issue is being left with the Administrator to pursue additional discussions with BRC about an appropriate stipulation. If they are unable to agree on a stipulation, the Administrator is to commence contested case proceedings, or bring it back to the Commission to do so.

Mr. Ketterer asked if the Commission was receptive to the same set of stipulated facts and violation of law without a penalty recommendation. Chair Peyton requested that the facts surrounding the 16-year old be more detailed. Commissioner White stated that he was willing to accept the same type of stipulation without a penalty recommendation.

Following a brief break, Chair Peyton stated that Commissioner Sealock misunderstood her vote on Agenda Item 5B(2) – amending rule 20.11(6) by adding new paragraphs "d" and "e". Chair Peyton stated that he did not realize the amendment incorporates parts of the amendment to rule 20.11(6)a(2), which she voted against. Chair Peyton advised Commissioner Sealock that if she wished to change her vote on that particular issue, she could do so. Commissioner Sealock advised the Recording Secretary that she wished to change her vote to "No" with regard to amendment of rule 20.11(6)a(2). With the change in Commissioner Sealock's vote, the amendment passed on a 3-2 vote, Commissioners Hansen and Sealock voting no. (See Order No. 98-159).

Chair Peyton moved to the Petition for Declaratory Ruling by Arlen Nichol, which was continued from the August 20, 1998 Commission meeting. Thomas Hanson, representing Mr. Nichol, advised Commission members that the parties had reached a Stipulated Agreement that was prepared with his participation. He indicated that he had already signed the Agreement, and hoped it would be agreeable to the Commission.

Chair Peyton called on Mr. Ketterer for his comments regarding the Stipulated Agreement. Mr. Ketterer stated he had received input from all parties involved as well as the Iowa Thoroughbred Breeders and Owners Association. He stated that the Stipulated Agreement resolves the membership requirement and that review of any nominations and other fees is an ongoing responsibility of the Commission in connection with season approvals for purses, etc.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Hansen moved to approve the Stipulated Agreement as presented. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-160).

Chair Peyton moved to the contract approval portion of the agenda. He called on John Pavone, General Manager of the Belle of Sioux City, who presented the following contracts for Commission approval:

- Argosy Gaming – Intercompany Charges for July 1998
- Brintons US Axminster, Inc. – Carpet for Vessel
- International Game Technology – Agreement and Trust for Wide Area Progressive System Machines (Replacements)
- Bally Gaming, Inc. – Purchase 6 Slot Machines (Replacements)
- Williams Gaming Inc. – Purchase 7 Slot Machines (Replacements)

Hearing no discussion regarding the contracts, Chair Peyton called for a motion. Commissioner White moved to approve the contracts as submitted. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-161)

Chair Peyton called on Jeff Terp, Vice President of Business Development for Ameristar Casino, who presented the following contracts for Commission approval:

- Iowa Des Moines Supply – Paper Supplies, China, Glass, Silverware, Equipment and Smallware
- McGarvey Superior Coffee – Coffee Grounds and Associated Equipment
- National Paper of Iowa – Various Paper Supplies, Can Liners
- Unisource – Paper Supplies, Drinking Cups
- Specialty Diving, Inc. – Marine Consultant Services

Mr. Terp advised the Commissioners that all of the contracts except for the Specialty Diving contract were with Iowa vendors. He noted those contracts are the result of Ameristar's outreach to local communities through various job fairs to locate Iowa vendors.

Hearing no further discussion regarding Ameristar's contracts, Chair Peyton requested a motion. Commissioner Sealock moved to approve the contracts as submitted. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-162)

Mr. Terp advised the Commission that the Gaming Association of Iowa was going to hold an Iowa Vendor Fair on October 15th so that Iowa companies could showcase their products. Several of Ameristar's new vendors are planning to participate. Commissioner Allen thanked Ameristar and the Iowa Department of Economic Development for putting together the vendor fair. Commissioner Hansen added his compliments as well.

Chair Peyton called on the President Riverboat. Mark Lohman, General Manger, presented the following contracts for Commission approval:

- Aristocrat, Inc. – Purchase of 8 Slot Machines (Replacements)
- Bally Gaming, Inc. – Purchase of 10 Slot Machines (Replacements)

Hearing no discussion regarding the contracts, Chair Peyton requested a motion. Commissioner Hansen moved to approve the contracts as submitted by the President Riverboat. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-163).

Chair Peyton moved to the contracts submitted by Lady Luck Bettendorf. Curt Beason, attorney for Lady Luck Bettendorf, presented the following contracts for Commission approval:

- Hampton Inn – Back-up Lodging to accommodate Guests when Lady Luck Hotel is sold out
- Thoms Proesstler – Food and Beverage, Miscellaneous Items (Contract Amount Increase)

Hearing no discussion regarding the contracts, Chair Peyton called for a motion. Commissioner Sealock moved to approve the contracts as submitted by Lady Luck Bettendorf. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-164).

Chair Peyton called on Ken Bonnet, President of the Mississippi Belle II, who presented a contract with the Kehl Family Limited Partnership for a Revolving Note for Commission approval.

Hearing no discussion, Chair Peyton called for a motion. Commissioner Hansen moved to approve the contract as submitted. Commissioner Sealock seconded the motion.

Commissioner White asked Mr. Bonnet how the new loan compared to the current loan. Mr. Bonnet advised Commissioner White the family was paying off a commercial bank loan and that this loan has basically the same adjustment rate, based on prime, and is basically the same terms as the existing loan.

Commissioner Allen asked if this loan was an ongoing transaction. Mr. Bonnet stated that when the contract was submitted, the company had $800,000 of outstanding bank

debt they had been making monthly payments on. He estimated this loan would be paid off in six or seven months. Commissioner White asked if the note was secured. Mr. Bonnet stated that it was not.

Hearing no further discussion, Chair Peyton called for a vote on the motion to approve. The motion carried unanimously. (See Order No. 98-165).

Chair Peyton moved to the Applications for Renewal of License and Approval of Live and Simulcast Racing Dates for 1999. Tony Payne, Executive Director of the Iowa West Racing Association the license holder for BRC, requested race dates of January1 through December 31, 1999, with seven performances per week. Afternoon performances will be held on Sunday, Tuesday, Wednesday and Thursday at 4:00 PM; evening performances will be held on Friday and Saturday at 7:15 PM, and a matinee performance on Saturday at 1:30 PM. Special performances were requested for Monday, May 31; and Monday, September 6 at 4:00 PM. There will be no races on Friday, December 24 or Saturday, December 25. He advised the Commission that BRC is having a very good year. The attendance through September 13 is 3,026,002. The amount of win has crossed the $78 million threshold, which is about 8% ahead of last year. Mr. Payne noted that coin in has exceeded $1.6 billion, also 8% ahead of a year ago. He advised the Commissioners that numerous improvements have been made to the greyhound facilities. At this point, Mr. Payne turned the presentation over to Mr. Okuniewicz. Mr. Okuniewicz stated that during 1997 BRC replaced the track heating system, and improved the asphalt in the kennel compound. They corrected some drainage problems, replaced the external kennel walls and added some gates at the same time. New air conditioning and heat pump units were added to half of the facility, and anticipate replacing the remaining units in the near future. He noted that BRC has started working on the infield project by installing sod on the infield and grading it for proper drainage. A sprinkler system will also be installed. Mr. Okuniewicz noted that all of the starting boxes have been refurbished, a new electronic trip was installed, and new asphalt driveway has been installed behind the starting boxes to help the operators during training. Mr. Okuniewicz advised that the tote board had been upgraded. He stated that all of the dots had been replaced and the board painted.

Commissioner White asked if the arbitration decision between BRC and the Iowa Greyhound Association (IGA) replaced a specific agreement between the two parties with respect to purse levels from gaming revenues. Mr. Ketterer advised Commissioner White that it is an annual process and replaces an agreement that will expire at the end of this calendar year with respect to the purses supplemented from gaming revenues for 1998. Commissioner White asked if the agreement was part of the application itself. Mr. Ketterer stated that Linda Vanderloo, Director of Racing/Administration for IRGC, has endeavored to work with both BRC and IGA as there have been difficulties in getting them to arrive at an agreement in a timely manner. She encouraged the parties to reach an agreement so that it could be considered at the same time as the license renewal.

Commissioner White asked if there has to be another agreement that incorporates the arbitration decision. Mr. Ketterer stated that the arbitration decision is the agreement,

which requires the Commission's approval. Commissioner White asked if there is a document that the Iowa West Racing Association and IGA need to execute. He wondered if the same situation would arise with PMR&C and Dubuque Greyhound Park & Casino. He stated that he doesn't want to approve something that is subject to some other agreement being reached.

Ms. Vanderloo advised the Commissioners that the original intent when processing license renewals was for the agreement between IGA and the tracks to be part of the renewal process. She noted that the arbitration decision between IGA and BRC was sent to the Commissioners the end of last week, which is why it is listed as a separate agenda item. DGP&C's agreement with IGA was received in a timely manner and was included in the license renewal binder.

Commissioner White asked Ms. Vanderloo if there was another document beyond the arbitration agreement that needs to be completed by IWRA and IGA. Ms. Vanderloo advised Commissioner White that the arbitration decision is the final, binding document, and is good for one year.

Ms. Vanderloo highlighted one statement in the arbitration decision between BRC and IGA: "All parties to the negotiations, including the Commission, shall consider that the dog racetracks were built to facilitate the development and promotion of Iowa greyhound racing dogs in the state and shall negotiate accordingly." She stated she had no real concerns after reviewing the application as a whole, but was very disappointed in the plans presented for the infield. If the plans were to scale, the plans should be enhanced.

Commissioner White asked if there was sufficient space and seating dedicated for those patrons desiring to watch the greyhound races. Ms. Vanderloo stated she felt there was enough for now, but should be monitored and increased in the future if the product continues to improve.

Commissioner Hansen stated that net assets were down $200,000, but was more concerned about the decline in revenue of approximately $15 million on the casino side. He asked Mr. Okuniewicz if he was concerned about a trend. Mr. Okuniewicz noted that they are in competition with two of the best riverboats in the state that continue to work to gain more of the market share. He stated that due to the types of facilities offered by the riverboat licensees, they are able to tap into a much larger outside market than BRC.

Mr. Ketterer stated that after reviewing the financials for the years ended 1997 and 1996, it appears the revenues have started to go back up. He asked how the 2% tax increase would impact revenues in the future. Mr. Payne stated the increased tax would amount to an additional $2,150,000 per year if the gaming revenues stay the same. He noted the first increase took effect in 1997, and they paid $2,158,000. He estimates they will pay $4,300,000 more in gaming taxes in 1998, and $6.4 million in 1999. When the gaming tax is fully indexed (36%), BRC will be paying $18 million more in taxes than when they were taxed at 20%, or a total of $75 million over time. Commissioner White stated that part of the funds being paid to AIM under the management contract could be retained to

offset some of the impact of the 2% tax increase. Commissioner Hansen noted that the management fee had decreased from $24 million to $16 million. Mr. Payne stated that he felt it would decrease to $13.5 or $14 million next year. Commissioner Allen stated that she hoped the racetracks would take the rising gaming tax back to the Legislature.

Hearing no further questions or comments regarding BRC's license renewal application, Chair Peyton called for a motion. Commissioner Hansen moved to approve the IWRA license renewal application. Commissioner Allen seconded the motion. Chair Peyton requested a roll call vote. The motion carried 4-1, Commissioner White voting no. (See Order No. 98-166)

Chair Peyton moved to the arbitration between IGA and IWRA. Chair Peyton asked Lyle Ditmars, legal counsel for IWRA, to comment on the purse structure. He stated that a survey of all tracks in the country had been conducted regarding the amount of purses paid. After completing the survey, the total amount of purses was divided by the number of kennels running at that particular track. The amount of money available depends on the number of kennels at a particular track. The number of kennels was then divided into the total purse to determine an average per kennel. Mr. Ditmars stated that BRC is the only member of the "$400,000 Club", the only track in the country where the average amount paid to the kennels is $400,000. There are two or three tracks in the $300,000 range, and everyone else is below that. Mr. Ditmars stated that BRC is hopeful the purse supplements will help the Iowa greyhound breeders become self-supporting in national competition.

Commissioner White asked Mr. Ditmars if the arbitration panel has the authority to order a plan for the distribution of the escrow account. Mr. Ditmars stated that BRC had asked the arbitration panel to do this in previous years. He stated that while the panel froze the account at its present level, they did provide some direction on ways to use the fund. Commissioner White again asked if the arbitration panel had the authority to order the distribution of the fund. Mr. Ditmars stated that he felt they did if the parties agreed to it, subject to Commission approval. Commissioner White asked if the account was just a BRC account, or a combined account. Mr. Ditmars explained that IWRA's position regarding the escrow fund is that the fund is to be used for the benefit of all Iowa breeders and the Iowa racing industry, which may not limit the fund to just BRC. IWRA has previously suggested low-cost/low interest loans to individuals interested in getting started in the greyhound business, scholarships for young people interested in breeding greyhounds, continue their education, supplement of payments to Iowa-bred dogs running out-of-state, etc., but have not been able to reach an agreement with IGA. Mr. Ditmars noted that the Escrow Committee consists of one member appointed by BRC, one by DGP&C, 2 by the IGA and another member appointed by the IRGC.

Hearing no further discussion regarding the arbitration decision, Chair Peyton called for a motion. Commissioner White moved to approve the arbitration decision. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-167)

Chair Peyton moved to the contracts submitted by BRC for Commission approval. Those contracts were:

- Cam Tech Corp. – Purchase of 900 Wood Slot Stands
- IGT – Wide Area Progressive System (Replace 20 Machines)

Hearing no discussion regarding the contracts, Chair Peyton called for a motion. Commissioner White moved to approve the contracts as submitted by BRC. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-168)

Chair Peyton moved to the license renewal application for the Dubuque Racing Association (DRA). Bruce Wentworth, General Manager of DRA, requested race dates of May 1 through October 31, 1999 for Dubuque Greyhound Park & Casino (DGP&C). There will be six performances per week with evening performances held on Thursday, Friday and Saturday at 7:30 PM, and matinee performances on Wednesday, Saturday and Sunday at 1:00 PM. Additional performances were requested for Monday, May 31, Monday, July 5, and Monday, September 6 at 1:00 PM. DRA also requested approval to continue simulcasting as set forth in their license renewal application.

Mr. Wentworth advised the Commission that DRA recently approved approximately $358,000 toward greyhound racing projects. Projects included upgrading the air conditioning units in the kennels, street repairs, a new tote system, and roof compressor replacements. They have scheduled an entire racetrack removal and replacement for spring. The appearance of the kennel compound has been improved. He noted that DRA has a strong relationship with the IGA. Mr. Wentworth further stated that DRA has 14 kennels, 10 of which are Iowa-based, and nine of the 10 are eastern-Iowa based. He noted that the license application does contain an agreement between DRA and IGA

Commissioner White asked about the escrow fund. Mr. Wentworth advised Commissioner White that he is a member of the Escrow Committee. He stated that DGP&C has never claimed an interest in the funds, nor has it claimed it is due any of the fund. He stated that he would not oppose any distribution that benefits all greyhound racing.

Hearing no additional comments regarding DRA's license renewal application, Chair Peyton called for a motion. Commissioner Sealock moved to approve the license renewal application of DRA. Commissioner Hansen seconded the motion. Chair Peyton requested a roll call vote. The motion carried unanimously. (See Order No. 98-169)

Chair Peyton moved to the contracts submitted by DRA. Those contracts were:

- Frank Hardie Advertising, Inc. (9) – Outdoor Billboard Advertising
- International Assoc. of Machinists & Aerospace Workers Local 1238 – Labor Agreement for Mutuel Employees

- Iowa Greyhound Association – IGA/DGP&C Agreement
- McCullough Creative Group – Design Work for Posters & Brochures

Hearing no discussion regarding the contracts, Chair Peyton called for a motion. Commissioner Hansen moved to approve the contracts as submitted by DRA. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-170)

Following a short break, Chair Peyton moved to the license renewal application of Racing Association of Central Iowa (RACI), the license holder for Prairie Meadows Racetrack & Casino (PMR&C).

Tom Timmons, Vice President of Operations, took a moment to clarify an issue with regard to the Arlen Nichol Stipulation. He stated that he did not feel it would affect the Kansas Futurity race. Mr. Ketterer indicated that was correct. This specific race does require entrants to be a member of the Kansas Thoroughbred Breeders and Owners Association, which provides the majority of the purse money. Chair Peyton noted that during the August meeting regarding this particular issue, it was stated that 15% of the entrance fees went to the Iowa Thoroughbred & Breeders Association (ITBOA). At that time, Commissioner Hansen pointed out that law prohibits licensees from sharing any fees with any other organization. Chair Peyton asked if that had been changed, or if it was a misstatement. Mr. Timmons indicated that he was not present at the last meeting, but indicated that in the past, ITBOA had retained 15% of the late fee, with the remaining amount going toward the purse. Mr. Ketterer stated it was his understanding that practice would no longer take place.

Commissioner White, noting that the license renewal stated the horsemen's contracts would be submitted at a later date, asked Mr. Timmons if the contracts with the horse groups for 1999 were completed. Mr. Timmons indicated they were not. Commissioner White stated he felt the application was not complete. Chair Peyton asked Mr. Timmons when he anticipated filing those agreements. Mr. Timmons stated that in the past, the four agreements have been submitted at the time of the season approvals, which have to be approved 45 days prior to the start of the race meet, usually in January or March. Mr. Ketterer advised the Commissioners that the application does include an agreement with the horsemen's organizations for the next five years setting forth the levels at which they will be funding the purses. There are more detailed agreements that are usually dealt with during the season approvals. He noted that BRC's are in their application because they have year-round racing. There was some discussion regarding how the license would be affected if the Commission did not approve the horsemen's contracts during the season approvals.

RACI has requested race dates for three separate meets. The first meet, for Thoroughbreds only, would run from April 17 through July 6, 1999, with four performances per week in April and May, increasing to five performances in June and July. Evening performances will be held on Friday and Saturday at 5:30 PM; with matinee performances on Tuesday, Wednesday and Thursday at 3:00 PM. Additional

performances were requested for Monday, May 31; Sunday, July 4, and Monday July 5 at 3:00 PM.

The second meet, a Mixed Thoroughbred/Quarter Horse meet, would run from July 20 through October 2, 1999 with four performances per week. Evening performances will be on Friday and Saturday at 6:00 PM, with matinees on Tuesday and Thursday at 3:00 PM. RACI requested an additional performance for Monday, September 6 at 3:00 PM.

The third meet, for Standardbreds, would run from October 8 through October 17, 1999, with three performances per week on Friday, Saturday and Sunday at 6:00 PM.

Commissioner White stated that the financial section, page 6, contained a note regarding the status of the lease between Polk County and RACI. He asked if the note had been removed or supplemented by additional information. Mr. Timmons replied that it had not, that the financial statement was issued in accordance with IRGC rules, which require the financial statement to be filed by March 31. Commissioner White asked if RACI had requested an amendment to the note contained in the financial statement. He pointed out that the Commission has a rule, 491-5.10, which would require Polk County to file a copy of the Lease with the Commission. He went on to ask if Polk County had filed a copy of the Lease with the Commission.

Tom Flynn, legal counsel for RACI, stated that RACI definitely has a Lease with Polk County. He further stated that the County has decided not to take issue with the Commission's decision to approve the Lease without the first amendment. Mr. Flynn stated that IRGC did have a copy of the executed Lease in its files, but in order to comply with rule 491-5.10, could ask the County to send a copy of the Lease as they understand it to be. Commissioner White indicated that was the course of action the Commission desired on this matter.

Commissioner White asked Mr. Flynn if the 1995 bonds had been redeemed and the escrow funds paid to Polk County. Mr. Flynn stated that the bonds had been redeemed, the escrow funds paid to Polk County and the title to the slot machines had been transferred to RACI. Commissioner White asked if there were any areas that had not been performed in the transition from the Operating Agreement to the Lease. Mr. Flynn indicated there was not.

Chair Peyton stated that he felt there had been some protection of the Iowa-breds at PMR&C, creating a situation where Iowa-breds would be competing in the same races against each other, prohibiting the growth of the industry in general. This practice maximizes the purse supplements to Iowa-breds in the short term. He indicated that he would like to see some type of strategy to improve the Iowa racing industry, and the horse industry in general, without the benefit of a short-term benefit to a particular group of horses.

Mr. Timmons stated that comparing PMR&C to BRC on one side of the ledger was OK, but on the other side, horse racing takes a lot longer to develop than dog racing. He feels

PMR&C is still growing, but is starting to find their niche in the various markets. Chair Peyton stated that they don't have a clear objective, and appear to be trying to please too many people. He stated that he would like to see PMR&C become a self-sustaining industry so that if the slot machines go away, they wouldn't be forced to shut the doors. In his opinion, the number of people there to see live racing has not been increasing. Mr. Timmons stated he felt they had some good days – Jockeys Challenge, Americas' Day at the Races.

Chair Peyton directed Mr. Timmons' attention to Item G, which asks the licensee to provide written documentation that the racetrack facility provides efficient, safe, and enjoyable use by patrons. The licensee is also asked to describe how they will maximize the quality of the live racing product for the wagering patron at the facility. PMR&C indicated they would be adding more barns, paths, an administration building, and hot walkers to be available for the horsemen. Chair Peyton stated that he didn't see how these items are going to insure a more enjoyable racing experience for the racing patron at PMR&C. Chair Peyton stated there are some structural limitations that he would like PMR&C to address.

Mr. Timmons advised the Commissioners that PMR&C brought in an 18 x 24-foot screen for the Iowa Classic races. He indicated PMR&C are attempting to purchase one.

Mr. Ketterer noted that Iowa law requires one restricted Iowa-bred race per day, but on many recent days, PMR&C has had four restricted races. He asked the reason for that. Mr. Timmons stated that field size was a factor. Mr. Ketterer stated that the Iowa-breds could also be entered in the open races as well. He noted that PMR&C was holding six thoroughbred and four quarter horse races per day during the second meet. He asked Mr. Timmons if any trainers had left PMR&C due to the large number of restricted races. Mr. Timmons stated he had been told that some trainers had left. Mr. Ketterer asked Mr. Timmons if any trainers left last year due to the lack of opportunities during the second meet. Mr. Timmons indicated there probably were, which is why they added another thoroughbred race. Mr. Ketterer asked what the increase was in the number of restricted races during the second meet this year over last year. He asked if the increase was an average of one additional restricted race. Mr. Timmons indicated that was probably accurate. Mr. Ketterer noted that the additional thoroughbred race really didn't help those trainers. Mr. Timmons agreed that it hadn't worked the way they thought it would, but the handle is 50% higher than it was last year.

Mr. Ketterer noted that PMR&C is asking for five days of racing per week during the first meet in June and July. He noted that staff has received feedback from the veterinarians that five days of racing per week puts pressure on the trainers/stables to try to fill races to get sufficient numbers. He stated that most tracks within the region are running 4-day race weeks, and those running five are aided by training farms or farms in the area; thereby increasing the inventory of horses to draw from. After reviewing the numbers for the 5-day race weeks, Mr. Ketterer noted that the number of entries seemed to fall off during those weeks. This year, the open races dropped, and the Iowa-bred races increased. Mr. Ketterer noted that the breeders and owners of Iowa-breds can run a

$10,000 horse for a $12,000 purse, regardless of whether it is an open or restricted race, and the purse supplement is the same for the restricted race as the open race. Mr. Ketterer asked why a trainer would run his Iowa-bred horse in an open race when he can run in a restricted race for the same purse and limit the competition. He stated that he feels there will be a stall allocation crisis within the next year or two due to the increased number of Iowa-breds, but feels this is an area in which the Commission should not be involved. He stated the Racing Secretary needs to establish some incentives so that Iowa-breds will run in the open races, and then make the trainers responsible for the number of stalls they have and how often they are entering their horses in races.

Chair Peyton stated that he would like to see PMR&C go beyond the status quo, and be in the elite group of racetracks. Mr. Ketterer stated that he felt the Iowa breeders would run their horses in the open races if it made economic sense for them to do so. He stated that he felt the long-term goal for the industry should be that Iowa-breds are good enough to race anywhere in the country, not just PMR&C. The fact that Iowa-breds are primarily running at PMR&C in state-bred races puts a ceiling on their value and the amount that another party would be willing to pay for them.

Commissioner Hansen stated that PMR&C's profits were down about $4 million from last year, going from a surplus of over $1 million to a deficit of $3 million. Additionally, part of the deficit is due to the gaming tax increase of approximately $4 million. He asked Mr. Timmons if he felt additional slot machines could have abated the loss. Mr. Timmons indicated he did.

Commissioner Hansen asked Mr. Timmons if they still planned to have chariot races during the 1999 racing season. Mr. Timmons indicated they had requested 6 days of harness racing. He indicated that the Commission had approved the concept in March. The standard bred horses are an industry in Iowa. They have not raced at PMR&C since 1990, but were very instrumental in getting the pari-mutuel laws passed. Several county fairs offer harness racing. PMR&C felt that if they were going to be the only horse-racing track in Iowa, they should do something with the harness industry to try to further develop it. Mr. Timmons indicated that it would take quite some time to do so, noting that PMR&C did almost everything in their power to do away with it. Commissioner Hansen stated that a better business decision would be to do everything possible to diminish the deficit and move in a positive direction. He noted that harness racing in Iowa has a history of devastating deficits – the final racing season was cut in half due to losses. Commissioner Hansen asked why PMR&C was embracing a losing venture. Mr. Timmons noted PMR&C held a 40-day harness racing meet in 1990. He agreed the races did lose money, but stated that could probably be said of everything being done at PMR&C with regard to horseracing. He stated it is an Iowa industry. PMR&C negotiated with them in good faith and felt they would have the extra funds to supplement purses. PMR&C still feels they can accommodate the harness races, and RACI intends to honor the agreement they made.

Chair Peyton took issue with Commissioner Hansen's characterization of the $3 million loss in 1997. He stated that figure was derived after paying $53 million to Polk County,

and $3 million in charitable contributions so that the facility actually generated $56 million in excess revenues. He felt there would still be sufficient excess revenues in 1998 since the monies paid to Polk County decreased considerably. Mr. Timmons stated that was PMR&C expectations for 1999.

Commissioner Allen noted that the application showed two "second meets" and asked if the "second meet" on page 9 should read "third meet". Mr. Timmons indicated that would be correct.

Chair Peyton noted that PMR&C made charitable contributions totaling $3 million in 1997. A total of $4 million was budgeted for the year. He stated that he has been receiving comments regarding the amount of charitable contributions PRM&C has made. He asked them to comment on the charitable contribution budget for the next fiscal year. Mr. Timmons stated that he did not want to make any comments as they are in the process of putting together the budget for next year. He stated their goal was to meet the projected budget set out in the renewal application. Chair Peyton recalled a debate with Mr. Flynn regarding the amount of charitable contributions made by PMR&C, noting there was considerable debt on the facility at that time. At that point, the Polk County Board of Supervisors stated no charitable contributions would be made until the debt was paid off. He stated the debt has been repaid several times over, and the facility generated a net income of $53 million, and only gave $3 million to charity. Chair Peyton noted that was when PMR&C was operating under the Operating Agreement, and didn't have a lot of choice in the matter. They are now operating under a Lease, and Chair Peyton feels there should be ample revenues to increase their charitable contributions, but RACI only increased them by $1 million this year. Mr. Timmons stated that he assumed Chair Peyton was not including the amount paid to Polk County. Chair Peyton stated the $12 million rent was not a charitable contribution. Mr. Timmons stated that he was referring to the $13.5 million PMR&C pays to Polk County in addition to the rent. Chair Peyton stated that is part of PMR&C's obligation, but noted that the statute requires any excess revenues above what is paid back to players, paid out in purses, or retires debt should be returned to the community. He noted that as a result of a contested case hearing, PMR&C made a commitment to increase the charitable contributions and work toward maximizing the distributions to the community. He is still seeing the attitude "We have given it to Polk County, we have satisfied our obligations." Chair Peyton stated that he does not feel giving the money to Polk County satisfies PMR&C's obligations to return funds to the community. Mr. Timmons asked Chair Peyton what he felt would be a fair amount. Chair Peyton stated that in the Order the parties agreed to last fall, PMR&C was going to shoot for 50% of the amount given to Polk County. Mr. Timmons asked how PMR&C's charitable contributions compared to BRC's. Commissioner Sealock indicated they could not be compared because the two entities are structured so differently. She pointed out that IWRA distributes charitable funds from three licensees.

Chair Peyton stated that he felt PMR&C had generated sufficient revenue this year that they could afford another $2.5 million to reach the target. He asked what kind of good faith commitment has been made to live up to the targets previously established. Mr. Timmons indicated he would have to take this issue back to RACI's Board. He stated

that he didn't want to debate the issue, but noted that the law states that governmental units are allowed for charities. Chair Peyton clarified that he was saying that PMR&C's obligation doesn't end with the funds given to Polk County, they are not the community. Mr. Timmons stated that RACI received approximately 140 grant applications in the spring, with 50 or 60 applicants receiving over $1 million collectively, as well as contributions to the United Way and Iowa Department of Economic Development. Chair Peyton stated that his comments are directed more at RACI's attitude than the charitable amounts. He noted that as the operator and qualified sponsoring organization, RACI has an obligation to distribute funds according to statute. In his opinion, there are still excess funds available for distribution at this time. Chair Peyton called for a commitment to go beyond the call of duty, not just meet the bare minimum.

Mr. Ketterer advised the Commissioners that when the casino at PMR&C opened in 1995, they relocated the jockeys' room and paddock. Several problems occurred in the jockeys' room during the first year due to the relocation, and were corrected. During the second year, it became apparent that the facility was too small, and there were more jockeys at the facility due to PMR&C's success. At the conclusion of the 1996 season, staff received some concerns from jockeys and the jockeys' guild. Mr. Ketterer stated that staff met with PMR&C management with the end result being that a new paddock and jockeys' room were incorporated into the overall plan for capital improvements. At the end of 1997, the jockeys and jockeys' guild were informed that a new jockeys' room would be constructed. At the beginning of this season, the various parties met to work out a solution for this year that would provide additional space for the female jockeys. The end result didn't resolve issues concerning the valets, who are responsible for cleaning and maintaining the tack and serving the jockeys, or provide any leisure or recreational area for the jockeys, who might have several races between their mounts. Mr. Ketterer stated that he wanted to make sure that the jockeys' room is included in capital improvements for next year. He stated that he had requested Ron Banks, regional manager for the Jockeys' Guild, attend the meeting to describe some of the problems with the current jockeys' room for the Commissioners. He noted there have been discussions about building a turf track and training track, both of which are important to PMR&C, but won't benefit anyone if there are no jockeys.

Mr. Banks stated that Mr. Ketterer had summed up the situation very well. He noted that the female jockeys were not satisfied with the current arrangements. He stated that Mr. Timmons had assured him that the jockeys would have a new facility prior to the start of the next meet.

Chair Peyton asked what staff was recommending. Mr. Ketterer noted that although PMR&C had undertaken numerous capital improvements and developments, they had not addressed the jockey room issue. Another major concern is the horse vans and trailers that stack up on Prairie Meadows Drive while waiting to get into the stable area. Staff has been assured this issue will be resolved prior to next year's meet.

Mr. Timmons stated that his commitment to Mr. Banks was that he would work with him. Last year, the problems were identified, one of them being the female jockeys' quarters.

He noted that the Commission approved a contract for PMR&C to purchase a trailer, which was remodeled and attached to the jockeys' building. The trailer can accommodate four jockeys comfortably. This wasn't a problem during the first meet, but the number of female jockeys increased during the second meet. Mr. Timmons stated that he felt PMR&C had done an adequate job of meeting their needs.

Mr. Timmons advised the Commissioners that the stable gate entrance project had been placed for bids. The bids were due the day before, and there were no bidders on the project. They are not sure where they will go on this project at this time.

Mr. Ketterer agreed that PMR&C had put forth their best effort with regard to the jockeys' room, but noted that it has been an understood commitment for the past two years, but does not really see any commitment for the 1999 race meet. Chair Peyton stated there had to be a commitment to build the jockeys' room, but it should also be a condition to the renewal of the license. Ms. Vanderloo indicated this was something that could be included with the 45-day plan. Chair Peyton asked what would happen if the Commission did not like the 45-day plan. Ms. Vanderloo stated that she did not see a problem renewing the license contingent upon certain items being completed before the 45-day plan is presented.

Commissioner Allen, referring to the November 1997 Commission meeting when PMR&C first presented their expansion plan, noted that Commissioner White had made a motion to approve architectural agreements relating to the horse pavilion, turf track, practice track, traffic and new dormitories. She asked what portions of these projects had not been completed. Mr. Timmons advised her that the dormitory project is almost completed. The dormitory will have 50 rooms and is adjacent to the stable gate area. He stated that the bids for the turf track and training track came in the day before, and the Commissioners have a letter before them asking for some type of administrative approval to move forward if the bids fit within the budget. Mr. Timmons noted that the jockeys' quarters were a part of another contract that was not approved. Mr. Ketterer asked Mr. Timmons if PMR&C had plans for a new jockey room that Leo Daly had prepared. Mr. Timmons stated there was a designer layout that included a jockey room, new paddock area, walking ring, etc.

Mr. Ketterer asked Mr. Timmons if he felt RACI's Board would approve new jockey quarters. Mr. Timmons stated that he could not speak for the Board at this time. Chair Peyton stated he favored some conditions on the license that would give staff some input on some of the issues discussed, along with Polk County providing a copy of the Lease, and reviewing the budget for next year with regard to charitable contributions. Mr. Ketterer stated that if the license is going to be contingent upon certain conditions, the racing dates should be contingent also.

Commissioner Hansen moved to approve the license renewal application of RACI subject to the following conditions:

1) Work with staff on matters covered under season approvals,

2) Timely completion of jockey room facilities,
3) Polk County submits a copy of the Lease pursuant to 491-5.10, and
4) Review of the charitable distribution policy.

Commissioner Allen seconded the motion. Chair Peyton requested a roll call vote. The motion carried unanimously. (See Order No. 98-171).

Chair Peyton moved to the contracts submitted by RACI, which were as follows:

- Allmakes Office Equipment Co. – Potential Vendor for Office Furniture for New Building
- Brown Brothers Electric – Roadlight Project along Prairie Meadows Drive
- McAninch Corporation – Removal and Replacement of Track Material
- Holmes Oldsmobile GMC – Vehicle Purchases
- Midwest Auto Fire & Sprinkler – Sprinkler Modification for Horse Barns
- Nauman Sod Farms – Turf Track Sod
- Storey-Kenworthy Co. – Potential Vendor for Office Furniture for New Building
- Turf Track and Training Track – Vendor to Be Determined

Hearing no discussion regarding the contracts, Chair Peyton called for a motion. Commissioner Hansen moved to approve the contracts as submitted. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-172)

Chair Peyton stated there was one item he overlooked – the letter sent to the Commission regarding the renewal of health insurance for the employees. The letter states that the renewal is effective October 1, 1998. Mr. Timmons stated PMR&C attempts to get their contracts a month ahead of time. He noted that PMR&C received notification of a 35% rate increase on the group health insurance in mid-August, and Blue Cross/Blue Shield will increase 4-5% as well. Due to the rate increase, they elected not to renew the Principal contract, requiring 1200 employees to change their insurance.

Mr. Farrell asked if the insurance contracts were contingent upon Commission approval. Mr. Timmons stated they really are requesting approval of the vendor, as there is no contract to submit at this time. He noted they are in the middle of union negotiations since the change in insurance resulted in a change in employee withholding. Mr. Farrell asked Mr. Timmons if the employees would have insurance on October 1 if the Commission did not approve the request. Mr. Timmons indicated they would not, because premiums are due in advance. Mr. Farrell stated that the Commission could still consider the contract next month even though the insurance would be in effect, as long as the vendor is aware that the contract is subject to Commission approval. PMR&C would technically be in violation of the contract approval rules; however, based on the circumstances presented; they would not be penalized for not complying with the rules.

Commissioner White asked if there was some kind of exception to the rule. Mr. Farrell stated that the Code requires at least 24 hours notice unless there is good cause, such

notice is impossible or impractical in which case as much notice as is reasonably possible shall be given. Mr. Ketterer asked if it was possible to not take any action today, and then consider the contract in October. There could be a problem if anyone raised any questions regarding the contract. Commissioner White questioned whether or not the contract would be valid. Mr. Farrell stated that he felt the contract would be valid if it did not contain a provision indicating that it was contingent upon Commission approval.

Commissioner White, based on the circumstances described by Mr. Timmons, stated an unwillingness to jeopardize the health insurance of PMR&C employees and for an exception to the five-day rule, moved to approve the health insurance agreement for the employees of PMR&C. Commissioner Allen seconded the motion. The motion carried unanimously. (See Order No. 98-173)

Mr. Timmons asked about the approval of the turf track and training track since no vendor was identified. He asked if he needed administrative approval or if they could proceed when the contract was awarded. Mr. Ketterer stated that PMR&C would need to bring the actual vendor's contract before the Commission for final approval.

Chair Peyton moved to Administrative Business. Mr. Ketterer stated that he had one or two issues, but due to time, he would address those in a memorandum to the Commission next week.

Chair Peyton moved to Public Comment. Bill Grace, President of Southern Iowa Gaming and license holder for Osceola, advised the Commission that in order to accommodate some of the Des Moines bidders; they had to move the bid date to October 9. They hope to have a good complement of Iowa and Missouri bidders. At that time, they will be bidding all of the dirt work, underground work, the buildings (hotel, casino finishes, etc.). The package does not include the sewer lines off site, the interstate bridge and terminal facility. These items will be bid in the middle of winter, with the contracts being let in February. Mr. Grace stated that the boat plans are approximately 2 weeks away from being completed. He anticipates the project will be completed by October 1999.

Commissioner Hansen asked Mr. Grace when the highway project would be completed. Mr. Grace stated that he felt it would be completed prior to the rest of the project.

Chair Peyton asked Mr. Grace if the referendum in Missouri had any impact on his property in that state. Mr. Grace indicated that it did, but that the problems could be resolved. He stated that his vessel is behind a private levy, which they own. He indicated the worst case scenario for them would be that they would have to dig a hole through the levy and push the barge out into the river.

Chair Peyton stated that the Commissioners had received a letter from Larry Seckington, legal counsel, regarding some properties around West Lake. He stated that he had received a phone call from Mr. & Mrs. Dorland, who were upset that no effort had been made to purchase their property. Mr. Grace stated that the property is clear across the

lake, and is not visible from the lake. Chair Peyton asked if there would be any impact on their property. Mr. Grace indicated that it would be negligible to non-existent. He indicated there is no way to reach the casino property from the Dorland's property.

Commissioner Allen asked if there were any problems with the annexations. Mr. Seckington stated that he had met with city staff the day before and held discussions with the adjoining landowners. Two plans have been submitted to the City Development Board. They anticipate a totally voluntary annexation that is acceptable to the State Development Board. They hope to have the annexations completed by late November.

Commissioner White asked Mr. Grace when he anticipated taking applications for employees. Mr. Grace indicated that it would probably be sometime next summer. He indicated they held a job fair to test the job market, and were inundated with prospective employees. He noted that underemployment, not unemployment, is the major problem in southern Iowa.

Mr. Ketterer introduced three IRGC employees from Council Bluffs: Todd Ollendick, Karen Larsen and Scott Ditch.

Hearing no further discussion on any issues, Chair Peyton called for a motion to adjourn. Commissioner Hansen so moved. Commissioner Allen seconded the motion. The meeting adjourned at 1:00 PM.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
OCTOBER 22, 1998

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, October 22, 1998 in the Showroom at the Miss Marquette Riverboat, Marquette, Iowa. Commission members present were Brad Peyton, Chair; Jacquelyne Allen, Vice Chair; and members Rita Sealock, Bill Hansen and Harold White.

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

Chair Peyton asked for a motion regarding the minutes from the September 17,1998 Commission meeting. Commissioner Allen moved to approve the minutes as submitted. Commissioner Sealock seconded the motion, which carried unanimously.

Chair Peyton moved to the next item – a discussion regarding flunixin research. He indicated that this item would be deferred until the November Commission meeting.

Chair Peyton moved to the Rules under Notice of Intended Action. He called on Commissioner White to address the proposed change to 491-5.7(99D) by adding a new subrule. Commissioner White stated that he drafted the proposed rule and forwarded it to Jack Ketterer, IRGC Administrator, to be included on the agenda. He stated that he started the process by reviewing the standards established for the Commissioners by the Legislature, which are higher than those established for individuals serving on other boards and commissions. Commissioner White stated it is his belief that individuals who serve on boards of licensees, direct management or have authority over gambling operations should be held to similar standards. He stated that he had limited the rule to racetracks because the money the non-profits receive from the riverboats is based on admissions. At the racetracks, the non-profit is the licensee and feels that if the individuals on the board are involved in the process of establishing rules for the game, they should not be allowed to play the game. Commissioner White stated that he was primarily looking at Prairie Meadows Racetrack & Casino (PMR&C). He stated this rule would primarily affect people who own, race or train horses or greyhounds. Commissioner White stated that the purpose for the rule being on the agenda today is to start discussions, but requested that any action on the rule be postponed until the November meeting. The deferral of any action would provide an opportunity for individuals and groups to submit their comments on the proposed rule to the Commission office. Commissioner White noted that at PMR&C there are individuals in management who own Iowa-breds. Upon reviewing the racing program, he found 10-race card (6 thoroughbred and 4 quarter horse) in which five of the races required the entrants to be Iowa-bred or Iowa-foaled. He perceives this to be a problem at PMR&C relating to conflict of interest. In his opinion, it is not sufficient to state that the individual will not participate in discussions or vote on a particular issue.

Commissioner Sealock asked Commissioner White to explain "c", which states: "Enter directly or indirectly into any business dealing, venture, or contract with an owner or lessee of a racetrack." Commissioner White explained that this provision would apply to any individual who controls the outcome of something.

Commissioner Sealock asked Commissioner White how the Commission would regulate this provision. He explained that the Commission has licensing authority, and could remove a person or licensee whose family is in violation.

Chair Peyton stated that he felt action would be easier to take against management or a director over a low-level employee, spouse, in-laws, or child. He stated that he was not sure that he wanted to extend the exclusions that far.

Commissioner Sealock stated this provision could cover everyone the licensee does business with, and asked how the Commission would regulate that. Commissioner White stated that if you have something that you feel is wrong, the rule needs to include all of the conduct in order to solve the problem.

Commissioner Sealock pointed out that the local communities elect the non-profit board members. Commissioner White stated that was part of the problem, was not willing to accept local community policies, and state-wide standards are necessary. He stated that standard business practices don't apply to gambling.

Commissioner Hansen stated that he shared Commissioner Sealock's feelings. He stated that it is important to have technical understanding on a board or commission. He noted there are other ways to prevent individuals from having too much influence on a board. Commissioner Hansen stated that the proposed rule is very similar to one drafted as an amendment in the Legislature that was either defeated or withdrawn.

Chair Peyton, hearing no further discussion or objections, stated that further discussion would be deferred until the November Commission meeting.

At this time, Chair Peyton moved to the next noticed rule, which amends subrule 25.14(2) – Peace officer. Commissioner White moved to adopt the rule with one amendment – insert the word "otherwise" before the word granted. Commissioner Sealock seconded the motion. The motion carried unanimously. (See Order No. 98-174)

Chair Peyton moved to the rules that are up for final adoption. He noted that the first amendment to rule 491-1.6 deals with the removal of satellite terminals outside of the gambling areas of the licensees' facilities. Commissioner White moved to adopt the rule. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-175)

Chair Peyton moved to the amendment to subrule 3.11(3) – Sharing information. Jeff Farrell, Assistant Attorney General for IRGC, noted that this proposed rule is one required by the Legislature to assist in the collection of student loans, and is similar to a

rule regarding child support recovery the Commission adopted a year or so ago. Commissioner White moved to final adopt the rule change. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-176)

Chair Peyton stated that the amendments to subrule 5.1(5) and rule 491-20.22(99F) would be dealt with at the same time. Commissioner White moved to adopt the amendment to subrule 5.1(5), but requested a change in 5.1(5)c(7) to read as follows: "Will not have a detrimental ~~financial~~ impact on the financial viability of other licensees operating in the market in which the licensee operates;". Commissioner Allen seconded the motion.

Commissioner White explained that he was proposing the change in language due to a comment received during the public hearing, which indicated this rule would guarantee no additional slot machines as any increase could have an impact on other licensees. The change will make it easier for licensees to meet the criteria.

Commissioner Sealock asked Commissioner White about (9), which states: "Will benefit the horse or greyhound industries in Iowa." Commissioner White stated that he doesn't want to allow the racetracks to increase the number of slot machines at their facilities.

Chair Peyton stated that he agreed with the proposed change, that the intent of the rule was not to prevent competition within a market. He called for a roll call vote on the amendment to subrule 5.1(5) with the proposed change set forth by Commissioner White.

Commissioner Sealock stated that she did not like the proposed rule. She wondered if the licensees' would be submitting a three-ring binder when submitting requests to add additional slot machines. In her opinion, there will always be some criteria that the licensee can't meet. Commissioner Sealock stated that the proposed rule automatically eliminates Council Bluffs, Dubuque and Osceola from requesting additional slot machines as there is no way the riverboats in those communities can say that they will not be detrimental to the horse or dog industry. She wondered why the Commission is trying to dictate how these facilities conduct their business.

Chair Peyton stated that Commissioner Sealock had raised a valid point that would apply to 491-20.22(99F). He stated that the Commission is currently doing these things, but without any written criteria. He feels this rule sets out the expectations of the Commission so the licensees can better address the issues. Chair Peyton stated that the addition of the following wording makes the rule more palatable: "The various criteria set forth may not have the same importance in each instance and other factors may present themselves in the consideration of the increase. The criteria are not listed in any order of priority." He agreed that the criteria establishes high hurdles that the licensees have to meet in order to acquire additional slot machines.

Commissioner Hansen stated that his comments would apply to both 5.1(5) and 491-20.22(99F). He stated that he felt this matter could be handled more succinctly by reviewing market studies and financial projections as a basis for making these decisions.

He expressed concern that if this rule, which provides the Commission with a broad power to reject every machine request, is adopted, the Commission would be put in the position of discriminating against a large number of the licensees. He noted that increases in the number of machines from the original license applications have ranged from approximately 5% to 110%. He also expressed concern about the requirement that the additional machines would result in permanent improvements and land-based development in Iowa, noting that with a few exceptions, there isn't much more room for land-based development.

Commissioner Hansen stated that he had concerns about the requirement that the licensee provide documentation that they have not had any material violations of any statutes, rules or orders in the previous 12 months. According to his calculations, at any given time, this requirement could prevent one-quarter to one-third of the licensees from meeting the criteria. He likened the proposal to a Trojan horse full of anti-gambling individuals.

Chair Peyton asked Commissioner Hansen if he wished to offer an amendment to strike 5.1(5)c(5). Commissioner Hansen expressed his desire to strike the proposed rule in its entirety. Commissioner White pointed out that the rule states that every criterion does not carry the same weight and that not all of them would necessarily apply in each instance.

Commissioner Sealock pointed out that the beginning language states: "... In the request for approval from the commission, a licensee shall demonstrate to the commission's satisfaction that the additional gaming machines:", which does not allow any flexibility. Commissioner White referred her to the wording following criteria (9). Commissioner Hansen stated that the reality is that a Commissioner could use any one of the nine criteria to deny a request for additional slot machines.

Chair Peyton, hearing no further discussion, called for a roll call vote on the amendment to subrule 5.1(5) as amended. The motion carried on a 3-2 vote, Commissioners Hansen and Sealock voting no. (See Order No. 98-177)

Chair Peyton then moved to the amendment to rule 491-20.22(99F), which pertains to the same issues as just discussed. Commissioner Sealock stated that her comments regarding this proposed rule change would be the same as for 5.1(5). Chair Peyton asked Commissioner Sealock if she was proposing that criteria (i) be stricken. Commissioner Sealock indicated that she would be happy to, but wasn't sure she should be proposing an amendment to a rule that she intends to vote against. Chair Peyton called for a motion.

Commissioner White moved to adopt the amendment to rule 491-20.22(99F), with an amendment to criteria (g) so that it would read as follows: "Will not have a detrimental ~~financial~~ impact on the financial viability of other licensees operating in the market in which the licensee operates;". Commissioner Allen seconded the motion.

At this time, Commissioner Sealock moved to amend the motion by striking criteria (i), which reads "Will not have a detrimental impact on the horse and greyhound industries in Iowa." Commissioner Allen seconded the motion.

Hearing no discussion on the amendment, Chair Peyton called for a roll call vote on Commissioner Sealock's amendment. The motion carried unanimously. (See Order No. 98-178)

Chair Peyton then called for a roll call vote on the original motion as amended. The motion carried on a 3-2 vote, Commissioners Hansen and Sealock voting no. (See Order no. 98-179)

Chair Peyton moved to the rest of the rules to be final adopted – subrule 5.16(21), Chapter 491-Chapter 13 and 491-26.19. Commissioner White moved to adopt the rules as printed. Commissioner Sealock seconded the motion. The motion carried unanimously. (See Order No. 98-180)

Chair Peyton moved to the Proposed Stipulated Agreement between Bluffs Run Casino (BRC) and IRGC stemming from underage gaming violations, which was deferred from the last meeting. Chair Peyton advised Commission members that the agreement had been negotiated with Iowa West Racing Association. He stated that the Stipulation recognizes that the first incident falls within the guidelines established by the Commission, and that the second is an extra-ordinary circumstance as a security officer had left his station and the length of time the minor was in the casino. The parties agreed to a $10,000 administrative penalty for the first incident. Due to the circumstances of the second incident, BRC agreed to the following conditions:

- A $20,000 administrative penalty,
- BRC will request that underage minors convicted of attempting to enter the casino will perform community service work directed toward youth services,
- Establish a plan by 3/31/99 to diminish the potential of entry into gaming areas by underage individuals,
- Another underage violation prior to 12/15/98 will be treated as a fifth violation for determining the fine, and
- AIM, BRC's management company, donated $10,000 to a Southwest Iowa charitable organization for the benefit of youth services.

Commissioner Hansen asked what the rationale was behind treating the next violation as the fifth violation instead of the fourth. Chair Peyton stated there were three components to this portion of the Stipulation: the punishment of the current event, some kind of preventative efforts to keep it from happening again and some structural changes to the facility to make it easier to police their entrances, and some kind of enhanced incentive to prevent further occurrences. He noted there was discussion of a probationary period, but it was determined that it would be difficult to enforce.

Commissioner Hansen stated that he had some sympathy for the racetrack licensees due to the number of entrances. He asked Chair Peyton if he was satisfied that BRC would be better able to control the situation once the facility is reconfigured. Chair Peyton stated that this portion of the agreement was offered by BRC.

Commissioner Hansen indicated his willingness to accept the Stipulation. He reiterated his statement that he felt part of the solution is for the Legislature to increase the fines assessed on the offender.

Commissioner Sealock pointed out that in Council Bluffs the offenders are fined, and in some instances, the parents are being charged with contributing to the delinquency of a minor. She indicated that she respected the parties being able to negotiate an agreement. Chair Peyton stated that Tony Payne, Executive Director of IWRA, was concerned about the situation and made no excuses.

Commissioner Allen stated that she applauded the efforts of the gaming industry to curb the underage gambling problem, but that they must realize there are consequences when a violation does occur. The stiffer fines reaffirm the Commission's commitment to hold the industry accountable.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Allen moved to approve the Stipulated Agreement. Commissioner Hansen seconded the motion, which carried unanimously. ((See Order No. 98-181)

Chair Peyton moved to the next agenda item, which was a discussion of the licensees' compliance with statutory provisions dealing with the acceptance of credit cards for gambling purposes and taking action related thereto. Chair Peyton stated that this agenda item rose out of several discussions concerning the ComData/ComCheck machines. He noted that the Commission has passed a rule removing those machines that has been placed under a session delay by the Legislative Rules Review Committee (LRRC). During the LRRC's discussion of the rule, several legislators commented that some of the practices contemplated by the rule were already prohibited by statute. Commissioner Peyton stated that during some research he conducted on this issue, he found that the Legislator that had offered the amendment prohibiting licensees from accepting credit cards thought some of the practices set forth in the rule were already precluded by statute. Chair Peyton noted that information had been requested from the licensees regarding the various contracts that have been entered into for the cash advance terminals, including the dates they were approved by the Commission, and the date they expire.

Commissioner White stated there are a couple of different ways in which casino patrons can use their credit cards at the facilities. One way is at an ATM machine owned by a bank and located at facility. This requires the patron to enter a PIN number in order to access funds already on deposit. The other method allows the customer to swipe their credit card which issues a check payable to the casino, which he stated is the same as if the licensee had accepted the credit card instead of cash. He noted that Iowa Code Section 99F.9(6) states: "A licensee shall not accept a credit card as defined in section

537.1301, subsection 16, to purchase coins, tokens, or other forms of credit to be wagered on gambling games." Commissioner White stated there is another prohibition on a casino granting credit to a patron to gamble. He stated that the Commission does not have any discretion on this issue as the Legislature has mandated that the licensee shall not issue credit for the purpose of gambling. In his mind, if there is any question about the legality of the ComCheck/ComData contracts, they should not be allowed. He further stated that it would not be appropriate for the Commission to take any action on this issue at this Commission meeting

Mr. Farrell expressed concern about the Commission interfering in contracts that are already in existence. He suggested the Commission request a legal opinion prior to taking any action on this issue in order to protect themselves.

Chair Peyton stated that there is a substantial difference between reviewing the procedure outlined in the contract and then seeing the actual practice. He stated that he is willing to review the contracts and consider the fact that the Commission may have approved something that is illegal under statute. Chair Peyton indicated that when he describes the practice of swiping a card through a phone, which causes a check to be printed in the cashier's cage made payable to the casino so that an individual can obtain chips or tokens for gambling, to "Joe Citizen", there is an overwhelming consensus that this practice is equivalent to the casino accepting a credit card. Chair Peyton stated that this issue affects the credibility of the Commission as well as the industry.

In summary of this issue, Chair Peyton stated that the Commission is in the process of evaluating the matter, and that it is appropriate for legal counsel to evaluate the contracts and offer advice. He suggested that prior to the next meeting, there should be specific actions based on the research so that adequate notice can be given to allow for discussion at the next Commission meeting.

Commissioner White stated that he felt an order should be issued requiring the ComCheck machines be removed from the licensees' facilities by a specific date based on the Commission's belief that they violate statutory requirements. He doesn't see any middle ground on this issue.

Following a short break, Chair Peyton called on Frank Biagioli, Executive Director of the Iowa Gambling Treatment Program, to give a report on the activities and participation of the licensees requesting license renewals. Mr. Biagioli stated that approximately 81% of the people calling the 1-800 Hotline indicate the casino games are the preferred activity.

Mr. Biagioli provided the following information regarding demographics: two-thirds of problem gamblers are male, with a slight increase in female problem gamblers; more than one-half are married, almost all have a high school education and some have some college education; and over three-fourths are employed full time. He stated that the number of gamblers receiving services through the Iowa Gambling Treatment Program and its local providers has increased to the highest level ever this year; however, the increases have leveled off. The number of calls for help is staying around 3500.

Mr. Biagioli stated that all three of the licensees with license renewals before the Commission have established links to the program's website, thereby allowing individuals who access the licensee's web page to gain access to that web page. He noted that all three licensees work with the local area providers to provide training. Research has indicated that casino employees are at risk for having gambling problems.

Mr. Biagioli stated that the Gambling Advisory Committee had voted at its last meeting to enter into a joint venture with the University of Nebraska at Omaha to host a conference on problem gambling next spring.

Commissioner Allen thanked Mr. Biagioli for his efforts and those of the general managers at the licensed facilities to combat problem gambling. She noted that she had attended the World Gaming Congress & Expo in Las Vegas in September, and elected to attend American Gaming's seminar on Responsible Gaming. During the first session, she saw several industry leaders in attendance. She then attended the four-hour certification program in the afternoon, which helped her to understand the issues the Gambling Treatment Program and industry have to address. Commissioner Allen stated that the seminar provided in depth training and instruction on how to design and implement problem gambling programs. She noted that industry advocates indicated that a successful program could not be achieved without a firm and solid commitment from corporate management and all employees.

Commissioner Hansen asked Mr. Biagioli how much revenue is being generated for the gambling treatment program. Mr. Biagioli stated that it is approximately $2.6 million. Commissioner Hansen asked if a substantial amount of the revenue was still being expended to make individuals aware of the program, noting that at one time 40-50% of the revenue was being spent on advertisements. Mr. Biagioli advised Commissioner Hansen that approximately $1 million was being devoted to advertising this year. The advertisements tell people where to go to get help, but also serves as a reminder to those in treatment to continue. He stated that it is extremely important to keep the 1-800-Bets-Off number in front of people. They have found that television advertising, although the most costly, produces the most results for the money. He encouraged the licensees to continue to use the responsible gaming messages on their advertising as well.

Commissioner Hansen asked Mr. Biagioli if the percentage of revenue directed to the gambling treatment program is still the highest in the country. Mr. Biagioli stated that the three-tenths of one percent is very unique in the country and the amount received by the program probably makes it one of the top three in the country.

Commissioner Hansen asked Mr. Biagioli if most of the gaming states have gambling treatment programs. Mr. Biagioli stated that it is very spotty – some have a help line, but do not have a network of providers. National Council on Problem Gaming considers Iowa to be one of the leaders in addressing problem gambling. Mr. Biagioli noted that all three racetrack enclosure licensees had participated in an earlier ICN session in which all licensees shared information on how they are addressing problem gambling and additional ideas on how to get individuals the help they need.

Chair Peyton, noting that Mr. Biagioli had been present during the discussion on the credit issue, asked him if he had any sense of the role credit plays in the majority of the problem gaming cases, and the amount of debt carried by these individuals. Mr. Biagioli noted that some have debt totaling tens of thousands of dollars, but is not sure that credit cards are the predominant problem. He noted that problem gamblers will manipulate credit any way they can. He noted that today credit cards can be used to pay for items that were not contemplated years ago – groceries, taxes, stamps, etc. Chair Peyton stated that some banks have started scrutinizing ATM transactions prior to issuing a credit card.

Commissioner White asked about requiring the licensees to have a 1-800-Bets-Off tag in all of their advertising similar to the warning required of the tobacco industry. Mr. Biagioli stated that he has worked with the Iowa Lottery to provide the number on their online terminal and ticket stock. He indicated that it would be very helpful in keeping a preventive message in front of the public, and would free up advertising dollars that could then be used to fund treatment programs.

Chair Peyton moved to the renewal of the racetrack enclosure licenses. He called on the Racing Association of Central Iowa (RACI)/PMR&C. Tom Timmons, Vice President of Operations, was available to answer any questions.

Chair Peyton, noting that various comments had been made about the enforceability of the Lease with Polk County and whether Polk County had given all the necessary approvals, stated that he had talked with Liza Ovrum, Assistant Polk County Attorney who had provided her copies of the actual resolutions passed by Polk County. He stated that Ms. Ovrum has assured him that the Lease is effective as approved by the Commission. Chair Peyton asked that the Resolutions be made part of the record to provide a clear record in future years.

Chair Peyton indicated that he felt there was some confusion surrounding the charitable contributions due to the Stipulation that was entered into between the parties last fall, which required distribution of funds to the community outside of Polk County government. Iowa statute requires that the licensee be the true owner, that a third party can not control the licensee's business. Under the Operating Agreement, Polk County reaped all of the economic benefit. One of the reasons for resolving the issue was to allow funds to be distributed to other community entities and demonstrate that PMR&C does not exist for the benefit of Polk County. The Agreement reached last fall requires RACI to attempt to distribute proceeds equal to 50% of the amount paid to Polk County to other charitable entities. Chair Peyton stated that he does not want the target to become the means to the end. He stated he would like to see PMR&C meet the target, but that it is irrelevant in terms of the statute requirements. He noted that the statute requires that all excess receipts be distributed. Chair Peyton stated that he does not feel RACI fully understands the statute requirements. He noted that RACI is in a unique position this year, because in previous years, any money left over was automatically given to Polk County. Chair Peyton stated that his interpretation of the statute requires that PMR&C take all of the net receipts and distribute them to charitable, civic, and educational groups. After reviewing the interim financial statement dated August 31,

1998, he noted that PMR&C is showing a net distributable income of at least $10 million, after distributions to charities and Polk County. Chair Peyton stated that he felt there would be a disagreement as to how much of the net receipts could be set aside for future capital improvements.

Mr. Timmons stated that he felt RACI was complying with the statute and the agreement. He noted that RACI is an ongoing business that needs to retain some funds for working capital. He stated that everything RACI does make either goes back to capital improvements or expenses, which stays in central Iowa.

Chair Peyton stated that he wanted RACI to get away from including a line item for charitable distributions in the budget. He indicated that process is fine for allocating distributions during the year and trying to maintain some kind of continuity in the distributions, but the amount to be distributed is determined by the statute, not by PMR&C's budget. Mr. Timmons asked Chair Peyton if he was recommending that RACI establish an escrow account, review the figures at the end of the year which would then become the charitable distributions for the next year.

Chair Peyton stated that he wanted to get away from the concept of reserving funds in one year for capital improvements that extend over several years. He noted that the interim budget calls for $2 million one year and $1.5 million next year. The $1.5 million for next year is deducted from the amount available for distribution to charities in the current year. Mr. Timmons stated that scenario was a little bit like "pay me now, pay me later". With Iowa's weather, it is hard to determine how much of the work will be completed, but do know the cost of the project and anticipated completion date. He wondered if Chair Peyton was suggesting that if they didn't pay out as much as they anticipated, that those funds be distributed and then find a way to pay for the upcoming work. Chair Peyton stated that he understood what Mr. Timmons was saying, and that the answer was yes.

Commissioner Hansen, noting that the financial statement shows retained earnings of $13.6 million, asked how much of that was impacted by operations, capitals and charitable distributions. Mr. Timmons stated that charitable distributions would be approximately $2.3 million, $3 million payment to the IRS that is not reflected on the statement, and approximately $6 to $6.5 million for capital improvements, depending on Commission action today. He indicated that another $4.7 has already been distributed in cash, with another $1.8 - $2 million to be paid out by the end of the year. Mr. Timmons stated that capital improvements have not been deducted off the profit and loss statement. Chair Peyton stated that Mr. Timmons was confusing cash flow and income. He stated that Commissioner Hansen was asking what that $13 million would look like at the end of the year. Mr. Timmons estimated it would have increased to $16 - $17 million.

Tom Flynn, legal counsel for RACI, stated that did not agree with the Commission's position that capital improvements did not fall within the confines of the statute. He noted that the statute states that the net receipts is the amount left after paying expenses, charges, taxes and fees. Mr. Flynn asked why RACI should go out and borrow the

money to pay for capital expenses approved by the Commission if the money is available to pay for it in their operating income. Chair Peyton stated that he felt RACI had to decide whether to borrow the money or fit it into their budget projections. Chair Peyton stated it appears the Commission and RACI have different definitions of what constitutes expenses. In his opinion, an expense is when it is incurred, not approved by the Commission. Chair Peyton noted that RACI's statement is showing more working capital than cash, instead of the other way around.

Commissioner White asked when the unaudited financial statement would be available. Mr. Timmons indicated that it would be available in late January.

Chair Peyton recommended that RACI consult with the Dubuque Racing Association as to their process regarding charitable distributions.

Mr. Timmons advised the Commission that RACI had received one bid on the turf track, and that it was considerably higher than anticipated. He recommended that the project be postponed indefinitely to the RACI Board and that those funds be used to resurface the existing track, proceed with some landscaping on the infield, move the tote board back, and resurface the horse path in the backstretch area and the training track area. Mr. Timmons noted that this project had been rebid as the first bids were too high. There were two bidders the second time around, and a lower price was reached.

RACI submitted the following contracts as amendments to their 1999 Gaming License Application:

- MidAmerican – Relocation of electrical facilities
- MidAmerican – Relocation of electrical facilities
- Correll – Galloping track and horse path construction
- McAninch – Effulent water piping to track field
- McAninch – Infield grading and pond reconfiguration
- McAninch – Removal and replacement of material for track surface

Commissioner White asked Mr. Timmons how long the current track surface has been in place. Mr. Timmons stated that it had been in place since 1990. Commissioner White asked Mr. Timmons if the people designing and constructing the new track surface have any experience with this type of work outside of PMR&C. Mr. Timmons stated that RACI had hired the firm of Allender Butzke Engineers, Inc. to collect various soil samples containing different mixtures of sand, clay and silt in an attempt to find the mixture closest to the original track, which is no longer available. He stated that their experience with racetracks is probably limited to the Midwest.

Commissioner White asked if RACI had been able to determine what caused the problems with the track this year. Mr. Timmons stated that he felt there were many problems. Commissioner White stated that RACI is spending a tremendous sum of money to revitalize the track surface. He asked Mr. Timmons if the RACI Board was satisfied that the engineering company has sufficient experience so that it will not be

necessary to resurface the track again in one or two years. Mr. Timmons advised Commissioner White that the RACI Board was comfortable with the engineering firm. He noted that no two racetracks are alike.

In response to the question about coming before the Commission in one or two years asking for money to resurface the track, Mr. Timmons indicated that could be a possibility. During the early racing years, when PRM&C held harness racing, the track was stripped every year and reapplied.

Commissioner White asked if the track sustained any damage because of running both thoroughbred and quarter horse races. He wondered if the training track would have any impact on the main track. Mr. Timmons stated that he didn't feel those races had any impact on the track. In his opinion, the training track will have a tremendous impact on the main track. The horses will be able to train on that track when the main track is in less than ideal condition.

Commissioner White asked if the harness races would have any impact on the existing track. Harness races would require that the track surface be compacted. In 1999, if the state receives a hard rain, the harness races will not be held. In the years 2000, 2001 and 2002 when 20-day meets are planned, the track surface will be stripped down. Commissioner White asked Mr. Timmons if the Commission had approved harness racing. Mr. Timmons stated he felt the Commission had approved the harness meet when they approved the renewal of the pari-mutuel license. The Commissioners indicated they did not feel they had approved the harness meet. Commissioner White stated if there was some question as to the impact harness races would have on the track, he felt that it would be better to postpone anything that might adversely affect the surface until the new surface can be evaluated to determine how it is running.

Commissioner Sealock stated that she was under the impression that when the pari-mutuel license was approved at the September meeting, that a 3-day harness meet was approved. Commissioner White disagreed. Mr. Timmons stated that he submitted a contract to the Commission in March or April with the harness association, and the Commission approved it. The contract set forth the number of days and the amount of money to be paid to the harness association. Mr. Timmons reiterated his belief that the Commission has approved a harness race meet.

There was a brief discussion regarding the number of Iowa-bred only races, and who establishes the number of races per meet.

RACI also submitted a contract with IAHBPA to promote/nurture/development of the thoroughbred industry, which included the purse structure for the thoroughbred and mixed meets for the 1999-2002 calendar year.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Sealock moved to approve RACI's Racetrack Gaming Enclosure License for 1999 and all

contracts. Commissioner Allen seconded the motion. Chair Peyton requested a roll call vote. The motion carried unanimously. (See Order No. 98-182).

Commissioner Sealock commented on the fact that she had used the ATM machine at PRM&C prior to leaving for Marquette, and that she got a message giving the 1-800-Bets Off number.

Chair Peyton called on Dubuque Racing Association/Dubuque Greyhound Park & Casino (DRA/DGP&C). Bruce Wentworth, General Manager of DRA, was available to answer any questions the Commissioners might have regarding the gambling license renewal application.

Chair Peyton asked Mr. Wentworth how DRA determined what funds were available for charitable distribution. Mr. Wentworth stated that it was not included in the budget. He noted that November 30th was the end of their fiscal year. Following a review of all expenses due such as payroll, current accounts payable, etc., which determines the amount available for charitable distribution. The Lease between DRA and the City of Dubuque requires that 50% go to the City, 25% to local charitable organizations and the remaining 25% is retained by DRA. Mr. Wentworth stated that they actually start looking at the figures in September due to the fact that the City is in the midst of their budget process, and they use their funds exclusively for capital improvement projects.

The funds retained by DRA is used in the following manner: a sum equal to 5% of the operating expenses is set aside for cash flow problems, with the remainder divided into three areas: retire outstanding debt, capital improvements and the remaining funds are used to drive the policy. If the capital improvement fund needs additional money, it will come from the last account. DRA/DGP&C announce the amount of funds available for distribution by the middle of December.

In addition to the contracts submitted with the license renewal, DRA submitted a contract with Durrant to develop plans for three different projects: clubhouse renovations, parking house lighting, and HVAC/electrical services. Mr. Wentworth explained that if DRA's Board approved the plans, he would be submitting contracts for Commission approval at the November meeting. He stated that the clubhouse renovations would better utilize existing space; they are not adding on to the facility. Mr. Wentworth estimated that all of the projects would cost $1.4 million.

Commissioner White asked how these projects would be funded. Mr. Wentworth stated the DRA/City Lease requires them to remit $20,000 per month for six months (live racing season). These funds are deposited in the Depreciation and Improvement Fund held by the City of Dubuque. The City and DRA determine what projects the money will be used for. Another source of funding is the operating budget, although minimally, and the final source of funding is the reserve fund. They have also asked the City to help with the project since it owns the building.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Hansen moved to approve DRA's racetrack enclosure gambling renewal application and contracts. Commissioner White seconded the motion. Chair Peyton requested a roll call vote. The motion carried unanimously. (See Order No. 98-183)

Chair Peyton called on Tony Payne, Executive Director of IWRA, to present their racetrack enclosure gambling license renewal application. Mr. Payne advised the Commissioners that to date, BRC has had 4,185,000 visitors since the last relicensing period. He noted that the gaming revenues have increased 5.7% from the previous year, and coin in is 3.5% ahead of last year. He stated that employees have sponsored 7 charity events in the last year, and participated in 13 other charity events. At this time, he turned the floor over to Doug Okuniewicz, Director of Operations.

An additional contract with Atronic Casino Technology LTD to purchase 21 replacement slot machines was also presented for Commission approval.

Commissioner Sealock noted that BRC's application indicates the Under 21 room is open 24 hours a day. Mr. Okuniewicz stated they have a guard in the room at all times, but do not encourage parents to leave children there for extended periods of time. He noted that the door to the room is usually closed.

Commissioner Allen questioned the size of the gift shop under Section III C of the renewal application. She inquired if the 64 square feet, as stated in the application, was a misprint. She referred to Iowa Administrative Code 491-21.13(6) – Sale of Iowa Products, which states "The Commission will consider how the proposed operation will promote the development and sale of Iowa products." She believes the intent of Iowa Administrative Code Section 491-21.13(6) calls for a greater exposure than the 64 sq. ft. stated in the application. Mr. Okuniewicz replied that to the best of his knowledge the measurement was correct and that the area for displaying Iowa products has been satisfactory. Commissioner White asked Mr. Okuniewicz to provide the Commission with a list of the total sales figures for the gift shop, and if possible, a breakdown of Iowa products.

Commissioner Sealock also commented on the fact that 96% of the contracts submitted with the application were with Iowa vendors.

Chair Peyton requested a motion regarding IWRA's racetrack enclosure gambling license renewal application. Commissioner Hansen moved to approve the renewal application and contracts. Commissioner Allen seconded the motion. Chair Peyton requested a roll call vote. The motion carried 4-1, Commissioner White voting no. (See Order No. 98-184)

Chair Peyton moved to contract approvals. He called on Catfish Bend Casinos. Bob Winkler, Assistant General Manager, presented a contract with Fort Madison Bank and Trust for Commission approval. This will be for the purchase of two $500,000 six-month Certificates of Deposit.

Hearing no discussion regarding the contract, Chair Peyton requested a motion. Commissioner Sealock moved to approve the contract as submitted by Catfish Bend Casinos. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-185)

Mr. Winkler informed the Commission that Catfish Bend Casinos had been awarded the Top Tourist Attraction award for 1998 for a city of their size. He noted that Fort Madison had also been awarded the Community of the Year award for the third year in a row. The Iowa Division of Tourism gives these awards.

Chair Peyton moved to the contract submitted by the Belle of Sioux City with Argosy Gaming for intercompany charges for August 1998. Terry Hirsch, Director of Riverboat Gambling indicated that a representative was not present, but recommended approval. Chair Peyton asked if documentation was submitted with regard to the charges. He was advised that the Recording Secretary did have the supporting documents available if he wished to see them.

Hearing no further discussion, Chair Peyton requested a motion. Commissioner Hansen moved to approve the contract as submitted by BSC. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-186)

Chair Peyton moved to the contracts submitted by Ameristar Casino. Jeff Terp, Vice President of Business Development, presented the following contracts for Commission approval:

- Atronic Casino Technology, Ltd. L.L.C. – 30 Video Slot Machines (Replacements)
- Atronic Casino Technology, Ltd., L.L.C. – 30 Video Slot Machines (Replacements)
- Atronic Casino Technology, Ltd., L.L.C. – 10 Video Slot Machines (Replacements)
- Casino Data Systems – 40 Video Slot Machines (Replacements)
- Cleanest Laundry in Town – Uniform Cleaning
- Guest Supply, Inc. – Hotel Amenities Supplier
- Sacco Marketing Communications – Creative Consultants
- Williams Gaming, Inc. – 17 Video Slot Machines (Replacements)
- Williams Gaming, Inc. – 63 Video Slot Machines (Replacements)

Mr. Terp also distributed some newspaper articles regarding an Iowa Vendor Fair sponsored by the Gaming Association of Iowa. He noted that forty-three vendors participated in the show.

Commissioner White stated that on occasion he has noted that the contracts have been signed by both parties, but there is no indication that the contract is subject to

Commission approval. Mr. Terp stated that standard operating procedure is to attempt to present the final version of a contract.

Hearing no discussion regarding the contracts, Chair Peyton called for a motion regarding the contracts. Commissioner White moved to approve the contracts as submitted by Ameristar Casinos. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-187)

Chair Peyton called on President Riverboat Casino. Douglas Himmelman, Director of Finance, presented the following contracts for Commission approval:

- Automatic Data Processing, Inc. – Payroll Processing and System Upgrade
- Paulson Gaming Supplies, Inc. – Custom Playing Cards, Assorted Custom Table Games Layouts and Other Related Gaming Supplies
- Quad City Mallards – Sponsorship and Television Promotions
- Rogan Incorporated – Purchases include Coin Wrap Paper, Poly Bags, Coin Counting Scale, Fill/Drop Cars and Maintenance Repairs on Scales
- Thoms Proestler Company – Supplier of Food Products and Related Disposables

Hearing no discussion regarding the contracts, Chair Peyton called for a motion. Commissioner Sealock moved to approve the contracts as submitted by President Riverboat Casino. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-188)

Chair Peyton called on Nancy Donovan, General Manager of Lady Luck Bettendorf. She presented the following contracts for Commission approval:

- United Way – Charitable Donations
- HyVee – Bakery Products, Hors d'oeuvres, Temporary Employee Meals and Specialty Foods
- Zimmerman Laurent Richardson – Public Relations and Advertising
- Osborne Coinage Company – Slot Tokens

Chair Peyton stated that he did not feel the contract with United Way required Commission approval since it was a charitable organization.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Hansen moved to approve the contracts as submitted by Lady Luck. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-189)

Chair Peyton moved to the contract submitted by Dubuque Diamond Jo (DDJ). Doug Gross, legal counsel, presented a contract with IGT for an Agreement and Trust Agreement for 11 Wide Area Progressive Slot Machines.

Commissioner White asked Mr. Hirsch if the Commission had adopted rules relative to this situation. Mr. Hirsch stated that the documents were the same as those approved for other licensees.

Hearing no further discussion, Chair Peyton requested a motion. Commissioner Allen moved to approve the contract as submitted by DDJ. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-190)

Chair Peyton called on Southern Iowa Gaming (SIG). Bill Grace, President, presented the following contracts for Commission approval:

- Approval of Loan Documents for Wells-Fargo Bank
- Estate Planning Transfer of Interests in Southern Iowa Gaming

Mr. Grace indicated that the construction contracts were not completed at this time. He hopes to have them completed by the middle of next week at which time he is going to request a telephonic Commission meeting so that construction can begin the first week of November.

Chair Peyton requested that the contracts be handled separately and called for any questions regarding the estate planning transfer. He stated that he understood the transfer would be less than 5%. Mr. Grace stated that he has three children and six grandchildren, and would like to convey 4.5% each to their trusts. The grandchildren's shares will be held in individual trust with separate trustees, but he will retain all of the voting rights.

Hearing no further discussion on this item, Chair Peyton requested a motion. Commissioner Hansen moved to approve the estate planning transfer request. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-191)

Chair Peyton moved to the approval of the loan documents. Commissioner White asked how the approval of the loan documents would affect the construction contracts. Mr. Grace stated they need to know when they sign the construction contracts that they will have the funds to pay them. He stated a bonding company, guaranteeing 100% payment, will bond the contract.

Commissioner White asked Mr. Grace how many contractors he is talking with. Mr. Grace indicated that he is still in negotiations with three contractors. He stated that all three are top-notch contractors who are ready and willing to start construction. The contract calls for substantial completion of the project by the end of October and 100% completion by the end of November 1999. Mr. Grace noted that "substantial completion" is defined "Completed to the point where the owner can place equipment and put personnel on the job". He indicated the facility would be open to the public in December.

Commissioner White asked if the general contractor would be building the boat. Mr. Grace stated he would not, but would be doing the finish work. He stated that the final

boat plans had been given to Commission staff, and that it would be let for bid the following day.

Chair Peyton noted there was a provision in the loan documents requiring Coast Guard Certification, and that it was his understanding that was not likely to occur. He asked if there was an alternative provision available. Mr. Grace stated that page 4 of the specifications for the barge sets forth the alternative requirements.

Chair Peyton expressed concern that the US Coast Guard requirement might be impossible to perform, and cause SIG to default on the loan. Mr. Grace stated he was not aware the provision was in the loan documents, and agreed that it should be addressed before the loan is finalized. Along the same line, Commissioner White asked Mr. Grace if the Commission would receive some type of certification that the vessel complies with the various requirements. Mr. Grace stated that the Commission would receive a document stating that the barge complies with all requirements as designed. He noted that the building plans for the building on the barge has to be designed to the 1994 Uniform Building Code as amended. Mr. Grace stated there could be conflicts between the two, but doesn't know of anyone who is knowledgeable about both building requirements.

Commissioner White asked when the boat contracts would come before the Commission. Mr. Grace stated that it would be going out to the bidders next week, and hopefully it would be in front of the Commission at the November meeting, or the following meeting.

Commissioner Sealock expressed concern about the "Put Option". She is concerned that it transfers the license to David R. Belding. In addition, she referred to a letter written by Larry Seckington, legal counsel for SIG, on October 20th in which he states "Collateral under the loan will be for the casino only...". Mr. Grace explained that if SIG defaults on the loan, Wells Fargo has the option to "put" the loan to someone else. At that point, a new lender would be in the picture, but there would not be a new operator. She requested that Mr. Grace put something in writing to the Commission stating that Mr. Belding will not acquire the license if Southern Iowa Gaming defaults on the loan.

Commissioner White asked Mr. Grace if he was personally guaranteeing the loan with Wells Fargo. Mr. Grace indicated that was correct. Commissioner White asked if Mr. Belding was also guaranteeing the loan with Wells Fargo. Mr. Grace stated that was correct. Commissioner White stated it was his understanding that if Mr. Grace should default on the loan, and the other individual paid off Wells Fargo, Wells Fargo will transfer any notes or other securities to the other party to allow them to enforce the debt against Mr. Grace. Mr. Grace indicated that before the above scenario takes place, Wells Fargo would also take all of Mr. Grace's assets.

Commissioner White stated that he viewed the loan documents as very ordinary, and that the "put option" simply memorializes the agreement. Mr. Grace noted that the documents specifically exclude the license.

Mr. Seckington stated that in his letter of October 20th, he was trying to indicate that only the land-based casino area is collateral. There are phases of the project that are not being completed at this time, and are not being used as collateral.

Commissioner Hansen expressed concern over the time constraints involved in the project. He noted that when the Commission voted to approve the license last November, he was the one who moved to extend the expiration date of the license by one year in order to allow them a year of operational time prior to having to renew the license. Commissioner Hansen stated that he had reviewed the minutes since last November, and found 28 deferrals, changes or revised proposals, e.g. beginning of construction, which has yet to begin, and four different opening dates for the project. He expressed concern as the Commission moves forward in reviewing contracts subsequent to the financing and construction contracts, that the Commission is able to ensure that the project will transpire in a timely fashion. Mr. Grace accepted responsibility for all of the delays, and stated that he felt they were ready to begin construction the first day of November.

Commissioner White asked Mr. Grace what other permits he still had to obtain in order to proceed with the project. Mr. Grace stated that he has obtained all of the necessary permits. He indicated that he would be meeting with the Osceola City Council that evening to conclude the annexation process.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner White moved to approve the loan documents with Wells Fargo Bank as submitted by SIG. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-192)

Chair Peyton moved to the next agenda item – Proposed Change of Ownership of Harveys Casino Resorts, Parent Company of Harveys Iowa Management Company, Inc., Co-Licensee with Iowa West Racing Association of Harveys Casino Hotel by Colony HCR Voteco, LLC. Steve Roberts, legal counsel, stated that the goal of the presentation was to make the following points:

- No change in the Iowa licensee following the transaction if approved by the Commission. The licensees will continue to be Iowa West Racing Association and Harveys Iowa Management Company, Inc.
- No change in the local management of Harveys Casino Hotel in Council Bluffs, Iowa.
- No change in the parent company in Tahoe, Nevada as it relates to management of the Iowa property and the other Harveys properties.
- No change in Harveys' commitment to Iowa, southwest Iowa, Council Bluffs, Pottawattamie County and, in fact, there will be an additional commitment of an outstanding investment company, Colony Capitol.

Mr. Roberts introduced Chuck Scharer, President and Chief Executive Officer of Harveys Casino Resorts. Mr. Schraer introduced the following individuals:

- Steve Cavallaro – Corporate Chief Operating Officer for Harveys
- Verne Welch – General Manager of Harveys Casino Resorts in Council Bluffs
- Art Hill – Property Controller for Harveys in Council Bluffs
- Ron Alling – Harveys' Corporate Legal Counsel
- Kelvin Davis – President & Chief Operating Officer for Colony Capital

Mr. Davis introduced the following individuals from Colony Capital:

- Byron Blount – Vice President with Colony Capitals
- Jonathon Grunswig – Legal Counsel with regard to Transaction

A copy of the presentation is attached to the minutes of the Commission meeting in the Des Moines office. Also attached is a letter from the Iowa West Racing Association in support of the proposed change.

Mr. Farrell clarified that Colony's application is not a new license application. He asked if they understood that Iowa law gives the citizens in any county the right to have a referendum to approve gambling, with the next general election coming in 2002. He stated that if the referendum does not pass, the licensee has the right to operate for nine years from the date of the initial license, if the time frame has not expired. Mr. Farrell confirmed that it was understood the nine-year period would run from the date of Harveys' initial license. Representatives from Harveys and Colony Capital agreed with all of the above statements.

Hearing no further discussion, Chair Peyton requested a motion. Commissioner Hansen moved to approve the change in ownership from Harveys Casino Resorts to Colony Investors III and Colony HCR Voteco as presented to the Commission. Commissioner Sealock seconded the motion. Chair Peyton requested a roll call vote. The motion carried unanimously. (See Order No. 98-193)

Chair Peyton moved to Administrative Business. He advised those in attendance that the Commission's web page is running. The address is www.iowaccess.org/irgc/. He noted that it is an excellent source of information. This will be the preferred distribution process for the agenda beginning with the November agenda.

Chair Peyton moved to Public Comment. Kevin Dorland, a resident of Osceola whose home overlooks West Lake, expressed his frustration over the coming gaming operation and Mr. Grace's comments that he would make a good faith effort to take care of the residents residing on the south side of the lake. He stated that SIG has control of the lake for 150 years. Mr. Dorland stated that when the vessel cruises it will go past his house. He noted that Mr. Grace had stated his intention to be a good neighbor, and wondered if he had any further explanations.

Chair Peyton asked Mr. Dorland what he would consider to be a resolution of the matter. He asked if he wanted to sell his property. Mr. Dorland stated that he had spent time and

money readying the property for an appraisal requested by SIG, but everything has come to a standstill.

Mr. Grace stated that the casino operation is on the opposite side of the lake from Mr. Dorland's house. He stated that he did not think the vessel would be visible from Mr. Dorland's house at any time. Mr. Grace stated that SIG had no need for that particular piece of property. He indicated that SIG's chances of developing the city property abutting the Dorland property are very remote. Mr. Dorland stated that the proximity of the casino operation would affect the value of his property, and their ability to sell it.

Chair Peyton advised Mr. Dorland that the Commission does not have any authority or jurisdiction in this particular situation.
Hearing no further Public Comment, Chair Peyton called for a motion to adjourn. Commissioner Sealock so moved. Commissioner Hansen seconded the motion, which carried unanimously. The meeting adjourned at 1:45 PM.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS

IOWA RACING AND GAMING COMMISSION
TELEPHONIC MINUTES
NOVEMBER 10, 1998

The Iowa Racing and Gaming Commission held a telephonic meeting on Tuesday, November 10, 1998 at 3:30 PM in the Commission's office located at 717 E. Court Avenue, Des Moines, Iowa. Commission members present were Brad Peyton, Chair; Jacquelyne Allen, Vice-Chair; and members Rita Sealock, Bill Hansen and Harold White.

Chair Peyton called the meeting to order at 3:35 PM and requested a motion to approve the agenda. Commissioner Allen moved to approve the agenda as presented. Commissioner White seconded the motion, which carried unanimously.

Chair Peyton moved to the second agenda item: Determination of compliance with the intent of conditions placed on the license of Southern Iowa Gaming Company (SIGC) relative to Title 46 CFR and 491-25.12 of the Administrative Rules. Bill Grace, President of SIGC, advised the Commission that Title 46 was not applicable. There is no one who will take the jurisdiction or inspect the vessel under Title 46. Representatives of SIGC met with the Department of Natural Resources (DNR). It was determined that DNR does have jurisdiction. They will inspect the vessel and certify the operators by performing annual, or more frequent, certifications and inspections. Mr. Grace stated that the other applicable area of jurisdiction was the Iowa Building Code – the 1994 issue of the Uniform Building Code.

Chair Peyton asked Mr. Grace if he fully understood the DNR requirements. Mr. Grace stated that he did, and that the facility would be in full compliance with the requirements. DNR will inspect the facility prior to operations beginning to insure compliance. He reiterated that DNR would be licensing the operators of the facility. Chair Peyton then asked Terry Hirsch, Director of Riverboat Gambling, whether he had any comments to make at this time. Mr. Hirsch, noting that this is a unique situation, stated to his knowledge this will be the only self-propelled vessel built in this manner, which was the main concern that the condition on the license addressed. He stated that the letter from the DNR indicating that they have reviewed the manner in which the vessel is being built and in their opinion it complies with their rules addresses the concerns expressed by the condition on the license.

Commissioner White stated that he had talked with Mr. Hirsch about 99F.7(13), which states that an excursion gambling boat operated on inland waters of this state shall meet all of the requirements of Chapter 462A and is subject to inspection of its sanitary facilities to protect the environment and water quality before a certificate of registration is issued by DNR or a license is issued under this chapter. In his opinion, the state DNR requirements under Chapter 462A are the regulations that apply to vessels operating on inland waters. He noted that the Commission has received documentation that the proposed construction, as designed, will meet DNR requirements.

Commissioner White asked Mr. Hirsch if the Commission had the authority to apply Mississippi/Missouri River standards to vessels operating on inland waters. Mr. Hirsch stated that he interpreted the Code somewhat differently in that he considered all waterways to be inland waterways, including the Mississippi and Missouri Rivers, when looking at the United States as a whole. In some instances, the Coast Guard has jurisdiction over inland waters. When they have jurisdiction, their standards apply and supersede the DNR. In his opinion, jurisdiction defaults to 462A when the Coast Guard does not have jurisdiction.

Commissioner White asked how 99F.7(13) applies except in areas where the Coast Guard doesn't have jurisdiction. Mr. Hirsch stated that he felt there were references in Chapter 462A stating that the rules apply to vessels not regulated under the United States Coast Guard. Commissioner White stated that he didn't feel the Commission could impose requirements above and beyond those imposed by the Legislature. He stated that he was satisfied after reviewing the documents from DNR, marine engineering statements and talking with Mr. Hirsch that the vessel would comply with the standards adopted by the Legislature.

Mr. Ketterer stated that in the past, the Commission has always had the comfort of the Coast Guard issuing a Certificate of Inspection on all of the riverboats because they had jurisdiction. In this instance, the Commission knew the Coast Guard would not have jurisdiction and elected to place a condition on the license requiring the facility to comply with Title 46 or an equivalent standard. Some of the problem has been in determining who had the ability to state that the standards or Iowa Building Code was the equivalent of Title 46. Mr. Ketterer stated that the Commission does not have any problem with DNR having jurisdiction over the vessel.

Commissioner White asked Mr. Ketterer what type of action the Commission needed to take. Mr. Ketterer stated that the licensee was looking for some type of indication from the Commission that they have met the condition placed on the license. He noted that Mr. Grace has stated on record that he understands the requirements of the DNR and that the boat, as proposed, will be built and approved in accordance with DNR requirements.

Commissioner White asked what building code had been referenced. Mr. Grace stated that he had referenced the Uniform Building Code of 1994 as revised. He stated that is the State of Iowa's Building Code. Mr. Ketterer stated that he felt the Commission would still be looking for compliance with DNR requirements for an ongoing vessel.

Chair Peyton stated that he felt the motion needed to indicate that the condition on the license had been satisfied as to compliance with Title 46 CFR, the Coast Guard Standard, provided the facility complies with all DNR requirements. Commissioner White stated that he felt the motion needed to reference two areas. Commissioner White moved that the Commission deem the conditions of Title 46 CFR met if the Osceola riverboat is designed and constructed in accordance with Chapter 462A, the requirements of the Iowa DNR and the 1994 Uniform Building Code as revised. Commissioner Allen seconded the motion. Jeff Farrell, Assistant Attorney General for IRGC, stated that he felt the

motion should refer to the Iowa State Building Code instead of the Uniform Building Code. Commissioner White amended his motion accordingly. Commissioner Allen concurred with the amendment.

Hearing no further discussion, Chair Peyton requested a roll call vote. The motion carried unanimously. (See Order No. 98-194)

Chair Peyton moved to the contract with Brooner & Associates, Inc. Mr. Grace stated that the project had been advertised heavily in the Des Moines, St. Joseph, and Kansas City areas. Originally, the list contained three other Des Moines area contractors, who eventually withdrew from the bidding process. When the original bids were received, all were over the projected costs of the project. A meeting was held with all interested parties and the project was resubmitted for bids, the results of which are contained in the material submitted. Mr. Grace noted that Brooner & Associates submitted the low bid, and recommended that the Commission approve the contract so that dirt work can begin.

Commissioner Allen, noting that Taylor Ball's bid was close to Brooner's, asked Mr. Grace why he chose not to go with Taylor Ball, an Iowa company, even though he has experience with Brooner & Associates. Mr. Grace stated that $100,000 represented quite a bit of money. He stated that the real issue is more than just money: all three contractors bid the project in good faith and are good quality companies. This contract represents one-third of the project, and Mr. Grace stated that he didn't feel it would be fair to the contractors to award the bid to someone other than the low bidder.

Commissioner Allen's next question focused on the timeline of the project. She felt that Mr. Grace wanted the Commission to approve the contract with Brooner & Associates because they would be working within the timeline established by Mr. Grace whereas Taylor Ball would not be. Mr. Grace concurred that Taylor Ball had bid more days than included in the specifications, but stated that he probably could talk them into performing within the specified timelines. He reminded the Commission that the vast majority of subcontractors, suppliers and laborer would be coming from Iowa; that the work performed by the general contractor would be in the minority in the overall project. Mr. Grace advised the Commission that Brooner & Associates had built the entire St. Joseph project in five and one-half months. He noted that the St. Joseph project isn't as big as the Osceola project, but the same steps and processes would need to occur. Commissioner Allen asked if the dirt contractor would be able to begin work yet this month. Mr. Grace stated that the contractor would begin work as soon as the loan was closed and recorded. He stated that the loan should be closed and recorded on either Friday or Monday.

Mr. Ketterer asked Mr. Grace to give a rough estimate of how the $45 million project is apportioned out – land acquisition costs, construction contracts, etc. Mr. Grace reminded everyone that the contract with Brooner is for the land-based facility, parking lot, site utilities and the bridge out to the shoreline; it does not include the vessel, fabrication and furnishing of the boat, the dredging that needs to done, land, or gaming equipment. According to the most recent budget on the project, Mr. Grace stated that the project is

going to cost about $47 million. He indicated they have the ability with the loan and cash they are providing to go to $50 million.

Commissioner Hansen asked Mr. Grace about the completion date shown on page two of the contract, which is subject to the barge being delivered by May 1, 1999. Noting that the barge is still in the design stage, Commissioner Hansen asked when the barge design would be presented to the Commission, when would it be let, and how long it would take to build the barge. Mr. Grace stated that he anticipated the barge design being completed within ten days of this conversation. He stated there are ten contractors on notice that have expressed an interest in bidding on the barge, all have been advised that the barge must be completed by May 1, 1999. Mr. Grace stated that he has a 30-day window in there as Brooner will accept a change order changing the barge completion date to June 1, which gives him six months to complete the boat.

Commissioner Hansen asked Mr. Grace how long he anticipated it would take to build the barge. Mr. Grace stated that Haven Steel, one of the contractors, had built a facility in Kansas City that was 200' x 400', four times the size of the Osceola barge, started construction on November 20th and finished it on April 5th. He stated that he felt the May 1 completion date is realistic, but one of the contractors has stated that it is not. If it is determined that it is not realistic, he stated he would submit a change order to Brooner and go to June 1, giving the contractor five and one-half months to build the barge. In his opinion, they should be able to build it in 120 days. Mr. Grace clarified that he meant 120 normal days, not 120 Osceola days.

Commissioner Hansen expressed concern that any change in the barge delivery date would push Brooner to ask for an extension of the October and November 1999 dates since Brooner's contract guarantees on October 31 and November 30, 1999 are predicated on having the barge by May 1, 1999. Mr. Grace advised Commissioner Hansen that Brooner would accept a change order regarding the barge delivery date from May 1 to June 1, 1999 without having any effect on the other dates.

Mr. Hirsch noted that Mr. Grace had stated that the barge specifications would be sent out in approximately ten days, asked when those bids would be received, and when the contract would be awarded. With that approximate timeline, this contract would not be before the Commission until the January Commission meeting and he asked if there was an issue with it not being approved until January. He also asked if the contract for the barge would include the superstructure steel, bid separately, done by the same contractor, or if it was on a separate timeline. Mr. Grace stated the barge builder would do the superstructure steel at the same time as the barge and within the same contract as the barge. He stated that he anticipates having bids by December 15th, and indicated his desire for another telephonic Commission meeting in December to approve the barge contract. Mr. Hirsch asked if it was necessary for the barge contract to be approved in December in order to meet the May 1 timeline. Mr. Grace indicated that it was, that he didn't think it was possible to wait until the January 21, 1999 Commission meeting.

Commissioner Hansen noted that Mr. Grace's letter included three areas that have not yet been addressed at this time, one of which is the barge, the dredging and mooring work. The matter of the barge has just been addressed. He asked when the dredging and mooring contracts would be before the Commission. Mr. Grace stated that he hoped to have the dredging to the Commission at the same time. They are in the process of receiving bids at this time, and will be approximately a quarter million. He then asked the deadline for submitting agenda items for the November 19th Commission meeting. Mr. Grace stated that he could have the dredging contract into the Commission by next week; that he was just waiting for two other bidders to submit their bids. Chair Peyton advised Mr. Grace that if he felt he would have the contract, then he should request that it be placed on the agenda and that if it was not ready, it could be pulled. Mr. Grace stated that the mooring contract would not be ready and there was no problem with it being approved at the January meeting. Chair Peyton asked Mr. Grace if he would have the dredging contract at least 48 hours before the Commission meeting. Mr. Grace indicated that would not be a problem. Mr. Ketterer stated it was really a question of getting the information out to the Commission members and indicated that Mr. Grace could send the information directly to the Commission members and the Des Moines office so that a copy of the contract would be available for public viewing. Mr. Grace indicated that he would do so.

Commissioner Allen asked Mr. Hirsch if all of his questions had been satisfactorily answered. Mr. Hirsch stated that the vessel is in the hands of the DNR, and they will answer them all. Commissioner Allen then asked about his questions regarding the timeline. Mr. Hirsch stated that by approving the contract with Brooner, the Commission would be looking at another telephonic meeting in order to meet the timeline specified in this contract.

Hearing no further discussion regarding the contract with Brooner & Associates, Chair Peyton called for a motion. Commissioner Allen moved to approve the contract with Brooner & Associates, Inc. Commissioner Hansen seconded the motion. Chair Peyton requested a roll call vote. The motion carried unanimously. (See Order No. 98-195)

Mr. Ketterer indicated it was the Commission's understanding that David Belding's role in the project was as a guarantor of the loan and that he would step into Wells Fargo's shoes under certain conditions, but would not assume the role of licensee. He stated that rumors have surfaced indicating that Mr. Belding would be the licensee within two years, replacing Mr. Grace. Mr. Ketterer asked for Mr. Grace's response. Mr. Grace stated that matter has never been discussed with Mr. Belding, the bank or anyone else. He stated that Mr. Belding is the bank's client, and that he has only met him once. He stated that he didn't think Mr. Belding could do so even if he wanted to based on his agreements with Circus Circus. Mr. Grace reiterated that it has never been discussed, and he has no intentions of turning the license over to someone else. Mr. Ketterer thanked Mr. Grace for clarifying the matter. Chair Peyton stated that the matter had been discussed at the last Commission meeting, and it was made very clear that should a transfer occur, Mr. Belding would have to come before the Commission to be licensed.

Mr. Grace stated that Mr. Belding has never even been to Osceola, and the only information he has on the project has come from Wells Fargo.

As there was no further business before the Commission, Chair Peyton requested a motion to adjourn. Commissioner White so moved. Commissioner Allen seconded the motion, which carried unanimously. The meeting adjourned at 4:10 PM.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS

IOWA RACING AND GAMING COMMISSION
MINUTES
NOVEMBER 19, 1998

The Iowa Racing and Gaming Commission met on Thursday, November 19, 1998 in Concord A at the West Des Moines Marriott, 1250 74th Street, West Des Moines, Iowa. Commission members present were Brad Peyton, Chair; Jacquelyne Allen, Vice Chair; and members Rita Sealock, Bill Hansen and Harold White.

Chair Peyton called the meeting to order at 8:30 AM and requested a motion regarding the agenda. He noted that the contract listed for Southern Iowa Gaming had not been received and would not be considered. Commissioner Sealock moved to approve the agenda as amended. Commissioner Allen seconded the motion, which carried unanimously.

Chair Peyton moved to approval of the minutes from the October 22, 1998 Commission meeting. Commissioner Allen stated that she had an addition to Page 14 of the minutes, which she had distributed to Commission members and the recording secretary regarding her discussion with Doug Okuniewicz on the size of the gift shop. Commissioner White recommended changing the word "Section" to "Iowa Administrative Rule". Commissioner White moved to approve the minutes as amended. Commissioner Hansen seconded the motion, which carried unanimously.

Chair Peyton moved to Administrative Business. He noted that an announcement had been made at the October meeting that the Commission's website is available and provides various information. The address is www.iowaccess.org/irgc/. This will be the preferred distribution process for the meeting agendas and minutes.

Chair Peyton moved to the next agenda item – Flunixin research. He called on Jack Ketterer, Administrator of IRGC, to discuss this matter.

Before beginning the discussion on this topic, Mr. Ketterer took a few minutes to acknowledge Jeff Farrell, Assistant Attorney General to IRGC. He advised that Mr. Farrell has been representing IRGC for the past five years, but beginning with the January meeting, we will have a new Assistant Attorney General, Jean Davis. Mr. Ketterer presented Mr. Farrell with a Certificate of Appreciation and an IRGC lapel pin.

Mr. Ketterer stated that the flunixin issue started in March of this year with an appeal filed by Gary Baish, an owner/trainer at one of the racetracks. He noted that efforts to solicit funding for a research project to determine the source of flunixin was unsuccessful. Mr. Ketterer stated that he would like to resolve and dispose of any outstanding flunixin appeals by reaching an agreement with the Iowa Greyhound Association. Hearing no disagreement with the proposed action, Chair Peyton moved to the next agenda item.

Chair Peyton moved to the rules filed under Notice of Intended Action. The first proposed rule amends rule 1.6(4), which amended a previous rule pertaining to the elimination of credit card advances made through ATM machines on land-based property. This proposed rule would equalize the treatment between licensees who own hotels and those who contract with a third-party provider, such as the Kinseth Group associated with Ameristar in Council Bluffs. Chair Peyton stated that if the Commission's rule would go into effect as presently stated, it would prohibit the licensee's hotel from having any kind of credit card advances. He noted that the proposed rule was initiated by some of the licensees.

Commissioner White stated that his understanding of the situation was that this rule would amend a rule that has not gone into effect as it was placed on a legislative session hold. Chair Peyton stated that was correct. Commissioner White stated that he felt it was presumptive of the Commission to attempt to amend a rule that has not gone into effect; that they should wait for the Legislature to take action on the rule during the upcoming session.

Commissioner Hansen stated that he shared Commissioner White's viewpoint. He then asked Mr. Farrell if the Commission was procedurally required to wait for any Legislative action.

Mr. Farrell stated that he had not looked at the issue too closely, but noted that Mr. Ketterer had spoken to Joe Royce, legal counsel for the Legislative Rules Review Committee (LRRC), and learned that the Commission did have the right to amend the rule at this time. He noted that whether or not they wanted to do so at this time from a policy standpoint was up to the Commission.

Chair Peyton stated it was his understanding that the proposed amendment would go through the same process with the LRRC, and he would expect them to make the effective date of the amendment the same as the original rule.

Commissioner Hansen asked whether acceptance of this rule would essentially do away with the original rule that went before the LRRC. Mr. Farrell disagreed. He stated the Commission could start this process from the beginning, making them similar to the rules already passed and delayed by the Legislature, who might take the same action with this rule.

Commissioner White stated that he felt the proposed rule deletes the primary purpose of the rule placed on a session hold. Chair Peyton disagreed, and stated that the proposed rule is to allow cash advances through an ATM machine in the lobby of a hotel, which may or may not be used for gambling. Commissioner White stated that he objected to the proposed rule for two reasons: 1) The Commission should not be amending a rule on Legislative hold, and 2) If the gaming industry wants the rule relaxed, then they should lobby the Legislature, but doesn't feel the Commission should relax the rule prior to the Legislative session even starting.

Hearing no further discussion, Chair Peyton called for a motion. The proposed rule died for lack of a motion.

Chair Peyton then moved to the proposed amendments to the introductory paragraphs of 5.7(1) and 20.15(1) regarding the duties and obligations of applicants and licensees by adding the words "or promise" in the first sentence.

Commissioner Sealock asked Chair Peyton why the proposed rule was necessary. Chair Peyton stated that one of his concerns was the public's perception of the integrity of the gaming industry, and that individuals involved in the Legislative process or the Commission being promised employment in the industry after their term has expired. He stated that the current wording only covers giving something of value during the term, and feels it should be expanded to include a promise to give anything of value following the expiration of the individual's term.

Commissioner White suggested adding the words "to give" after the word "promise" so the first sentence will read "No person shall give or promise to give anything of value..." Commissioner White moved to adopt the Notice of Intended Action as amended regarding 5.7(1) and 20.15(1). Commissioner Allen seconded the motion.

Commissioner Hansen asked if Iowa had experienced problems in this particular area, or what precipitated the need for the rule. Chair Peyton stated that he was not aware of any problem, but noted there have been former Legislators that have become employed by the industry. He stated that he felt it was inappropriate for a promise of future employment to be made to anyone that holds public trust. Chair Peyton stated that he felt the rule was necessary to make that clear.

Hearing no further discussion, Chair Peyton requested a roll call vote. The motion carried 5-0. (See Order No. 98-196)

Chair Peyton moved to the proposed amendment to 491-5.7(99D). Commissioner White stated that he had proposed this rule change during the meeting in Marquette at which time he requested that the racetrack licensees submit information setting forth how the proposed change would affect them. He stated that he considered this proposed rule to be a work in progress, and was not asking for any action to be taken at this meeting. From the comments received, Commissioner White stated that the word "employee" should be removed and change the degree of affinity or consanguinity from second degree to first degree. He stated that he was considering adding language that the term "business" does not include the State of Iowa or its political subdivisions. Commissioner White noted that one of his main concerns was including all individuals that should be included under this rule, but not those that should not be. He indicated that due to restructuring within Iowa West, it may be necessary to redefine the term "holder of a license" in order to cover the various subdivisions of Iowa West Racing Association (IWRA). Commissioner White indicated that he would probably be bringing the rule back before the Commission at the January Commission meeting. He asked that any

other comments pertaining to the proposed rule be submitted. He stated that he didn't see any philosophical objections to the rule in the comments already received.

Commissioner Hansen made the following comments concerning the proposed rule:

1) The potential conflicts are astronomical. Comments from the Dubuque area stated the rule could impact more than 25,000 individuals.

2) The Commission needs to be careful of the fact that the rule as originally crafted would void certain contractual obligations existing within the industry either by virtue of the Commission or Leases. He noted that the Commission has either agreed or stipulated that a representative of the horseman's association would be a member of the RACI Board of Directors.

3) He is concerned that this rule could kill the spirit of public-minded volunteers. He feels this rule casts a shadow on the non-profits and the people involved in the industry.

4) The rule perpetuates the discrimination aspect that there is a difference between racetracks and riverboats.

5) The rule, as currently stated, ignores the fact that the Division of Criminal Investigation conducts background investigations of individuals involved in the industry.

6) The rule was defeated in the Legislature, providing ample evidence that the Legislature never intended to go this far policy-wise.

Commissioner White stated that the above list was drawn up before he made his changes, but that he did agree with Commissioner Hansen on some of the issues. He noted there was some discussion regarding the distinction between riverboats and racetracks at the last meeting. In his opinion, there are two differences. At a racetrack, the directors of the racetrack can influence which horses are eligible to race, what races are there, how many horses trainers can keep on site, how many Iowa-bred races, etc. At a riverboat, management has no influence over who can play the games as long as they are of legal age. The ability of management to influence the outcome of the game does not exist on a riverboat. With regard to distributions, at the riverboats it is basically based on a per capita or head count basis, but at the tracks, the issue directly affects distributions. If there is to be a rule of this nature, he feels it is more appropriate to have it focus on the racetracks.

Commissioner Sealock stated that she would be interested to see the next version of the proposed rule, but indicated from a philosophical viewpoint, she could not agree with the rule. She does not feel the Commission should be involved in determining who serves on the non-profit board in the local community. Commissioner Sealock asked if it would be necessary for those non-profits holding the license for both a riverboat and track to have two different boards.

Commissioner White stated that one of the questions since his arrival on the board has been local control versus state regulation. He stated that it is his intent to avoid certain relationships – quid pro quo – in which certain individuals could receive a benefit from serving on the board. If an individual is serving on the board for community or charitable

purposes, the proposed rule would not have any effect on them. Commissioner White stated the rules would only affect those individuals serving on the board of the local non-profit for personal benefit.

Commissioner Sealock noted that each non-profit board is unique – some elect their members, others have members appointed by different agencies. She wondered how those boards would screen their members. Commissioner White stated that it is always easier to not have to worry about ethics and complying with rules. He indicated that he feels licensees are willing to accept the burden as a consequence of their holding a license.

Commissioner Allen stated that she concurred with the comments made by Commissioner Hansen, and appreciated the comments from the gaming industry. In her opinion, the comments were thought provoking and worthy of further consideration. Commissioner Allen stated that even though she agrees with the basic concept of the proposed rule, she feels it will open up "Pandora's box" and that the broad scope of inner-family relationships would make it very difficult to enforce.

Chair Peyton stated that the notion that the Commission doesn't have any say on who serves on the non-profit boards strikes him as odd. He noted that background checks are conducted on everyone who serves on a board. He stated that there are certain standards that have to be followed when appointing individuals to serve on the non-profit boards. Chair Peyton stated that he was not saying he was prepared to support the rule in its present form. He stated that he feels the Commission does have the right to set standards that would avoid potentially unethical conduct. Chair Peyton stated that the Commission is not saying that anyone is engaging in that type of conduct now, but the Commission's role is to anticipate that, not to wait until something occurs.

Chair Peyton moved to the proposed amendments to 491-5.15 (99D) and 491-25.20(99F) pertaining to the gambling treatment program. He stated that he had been informed that most licensees have policies or procedures for identifying problem gamblers, and invited any of the licensees to comment on the proposed rule. Chair Peyton indicated that the proposed rule came about because of a seminar staff attended at the recent World Gaming Congress and Expo in Las Vegas. He indicated that he had requested Mr. Ketterer to check with other gaming jurisdictions on what was being done at the regulatory level to deal with problem gambling. Several gaming commissions are considering similar provisions. Chair Peyton stated the proposed rule is based on information he received about provisions proposed in Nevada, which was designed to address criticism of the industry via the National Gambling Impact Study Commission. In his opinion, the proposed rule goes hand-in-hand with the Commission's support and cooperation with the Gambling Treatment Program.

Commissioner White noted the Commission has rules before it promoting the integrity of the gaming industry. He feels the two rules go together. He noted that Frank Biagioli, Director of the Gambling Treatment Program, had addressed the Commission at the October meeting and indicated that the number of people seeking assistance for gambling

problems continues to rise. Commissioner White noted that the amount of funding available for the program is tied to the casino's receipts. He noted that the fund received over $2 million last year, and approximately half of that was used for advertising to make people aware that help was available. Commissioner White noted that the Commission's web page contains links to all of the licensees, as well as the Iowa Gambling Treatment Program's web page at www.1800betsoff.org. He asked if there was some way the licensees could provide additional assistance in getting the message out regarding the gambling treatment program beyond what they are currently doing. He moved to adopt the Notice of Intended Action regarding rules 491-5.15 and 491-25.20 with an additional subparagraph (c), which would read as follows: The licensee shall include in its racing programs and a substantial number of its advertisements information on the availability of the Iowa Gambling Treatment Program." Commissioner White stated that he felt information was already being included in the racing programs at the three racetracks. His goal is to free up funds currently being used for advertising for use in the treatment phase of the program.

Chair Peyton requested a second to the motion before additional discussion occurred. Commissioner Allen seconded the motion.

Commissioner Hansen stated that he had a problem with the whole issue. He noted that the minutes of the October Commission meeting indicated that Mr. Biagioli stated the level of calls coming into the Gambling Treatment Program had leveled off at 3500. In his opinion, the Commission is engaging in conspicuous crusading against gambling without doing something meaningful; the Commission continues to attack the symptoms, but not the cause. Commissioner Hansen agreed that identifying individuals with a gambling problem is important, but is not sure how much is being accomplished through counseling. He noted that most of the articles on the subject matter have conceded that the root cause is addiction. Money is being committed to advertising, hand-holding and counseling, but not doing anything about studying the addictive behavior of people that pushes them in the direction of gambling, alcoholism, smoking, etc. He feels that rather than continuing the conspicuous crusading, the Commission should recommend, without any type of fee or tax increase, that $500,000 be given to the University of Iowa to study addiction.

Hearing no further discussion, Chair Peyton called for a roll call vote. The motion carried on a 4-1 vote, Commissioner Hansen voting no. (See Order No. 98-197)

Chair Peyton indicated the Commission would consider the Notice of Intended Action regarding proposed amendments to rule 491-5.16, subrule 10.2(6) and rule 491-13.5 as a group.

Mr. Ketterer advised that all three amendments were recommended by the Stewards at Prairie Meadows Racetrack & Casino and involve horse racing. He provided the following synopsis of each rule:

1) 491-5.16(26) – Outriders. This rule requires the licensee to provide a minimum of two outriders. This is a standard within the industry. He noted that outriders assist jockeys with horses in the post-parade or after a race, and are responsible for catching loose horses that have thrown their riders during a race.

2) Subrule 10.2(6) – Gives the Stewards the discretion to declare any horse(s) precluded from having a fair start as a non-starter and any wagers involving said horse(s) can be ordered refunded. He noted the Stewards are currently doing so, but were concerned that there was not a specific provision allowing that action in the rules.

3) 491-13.5(3) – Licensees policies. Mr. Ketterer stated that the Commission would like to change the rule citation to 10.2(a)(7) and change the words "licensees" or "licensee" to "racetracks" and "racetrack". The rule would then read as follows: It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with the racetrack's policies as published in literature distributed by the racetrack or posted in a conspicuous location." Mr. Ketterer stated that the Board of Stewards, comprised of 2 Commission staff members and 1 from the licensed racetrack, occasionally have to deal with situations not specifically covered by rules, but are policies of the racetrack. This rule gives the Stewards the necessary authority to take action in those situations.

Mr. Ketterer recommended that the Notice of Intended Action regarding the above rules be approved.

Chair Peyton called for a motion to approve the Notice of Intended Action as amended regarding the proposed rules. Commissioner Hansen so moved; Commissioner Sealock seconded the motion. The motion carried unanimously. (See Order No. 98-198)

Chair Peyton noted the only two items left under Notice of Intended Action – proposed rule changes to subrules 21.10(12) and 21.13(4) – pertain to gaming integrity. He stated he has had a problem with the Commission's criteria for determining the qualifications of the applicants. One of the Commission's criteria required the applicant to promote the gaming industry in Iowa. Chair Peyton's proposed change would strike that requirement and instead require the licensee to "ensure high gaming integrity in Iowa".

Commissioner Sealock moved to approve the Notice of Intended Action. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-199)

Chair Peyton moved to the rules listed for action under final adoption. Mr. Ketterer stated that the Commission has acted on these particular rules under Notice of Intended Action. He noted that changes to rules 491-4.24 and 491-4.25 limits the submissions to hearings before the Commission or an Administrative Law Judge. The changes to 10.5(17) sets the eligibility requirements for claiming a horse, while the new paragraph 2 of the same rule establishes the races in which a claimed horse is eligible to participate. Mr. Ketterer recommended approval.

Chair Peyton called for a motion. Commissioner Allen moved to Final Adopt the above rule changes. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-200)

Chair Peyton moved to the request of Iowa West Racing Association/Bluffs Run Casino (IWRA/BRC) for approval of the 1999 Racing Season. They have requested racing dates of January 1 through December 31, 1999, with a total of 364 performances. There will be seven performances per week with evening performances taking place at 7:15 PM on Friday and Saturday; afternoon performances will begin at 4:00 PM on Sunday, Tuesday, Wednesday and Thursday, and a matinee performance on Saturday at 1:30 PM. Additional performances were requested for Monday, May 31 and Monday, September 6 at 4:00 PM. No races will be held on Friday, December 24th and Saturday, December 25th.

Doug Okuniewicz, General Manager at BRC, stated that during 1998 BRC had concentrated on making improvements to the track, kennel compound, and infield.

Hearing no further discussion, Chair Peyton requested a motion. Commissioner White moved to approve the 1999 Racing Season request as submitted by IWRA/BRC. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-201)

Following a short break, the Commission held a discussion regarding the licensees' compliance with statutory provisions dealing with acceptance of credit cards for gambling purposes. Chair Peyton noted that this issue had come before the Commission at previous meetings and is a continuing discussion item.

Commissioner White noted the Commission has worked on administrative rules concerning credit cards and ATM machines, and they have been submitted to the Legislative Rules Review Committee. He noted there is an existing statutory ban on licensees accepting credit cards for gambling. He clarified that when the Commission talks about ATM machines they are talking about machines placed on the premises by a bank or other financial institution that allows individuals to get cash out of the machine, noting that it is a transaction between the financial institution and the customer. The casino's only involvement is that the ATM machine is on its premises.

Commissioner White stated that the current discussion revolves around the licensees' contractual relationship with various companies, which has the effect of accepting a credit card for gambling purposes. Under this scenario, the customer calls the company, swipes the credit card, and a draft is then printed out in the cashier's cage. The customer then uses these funds to acquire gaming chips or tokens. The question is whether this practice is a violation of an existing prohibition, and if so, then it should not be allowed to continue. He noted that a licensee was requesting approval of this type of contract on the agenda for this meeting. Commissioner White stated that the Commission has approved these contracts in the past, and that they contain various termination and renewal provisions.

Commissioner White stated that if these kinds of arrangements are prohibited, the Legislature does not have the ability to enforce the statute and the Commission has an obligation to do so. He noted the Commission has been criticized for taking action beyond Legislative intent, but doesn't feel this situation falls in that category as the Commission is charged with enforcing Iowa's gambling laws. The next question the Commission must ask is "What is the effect of the prior approvals?" Commissioner White stated that the Commission must accept the fact that this type of arrangement is prohibited by the Legislature. The Commission derives its authority from the Legislature and can not approve any arrangement that is improper. He stated that no licensee or vendor would have the legal right to rely upon the Commission's approval of a contract when the Commission did not have the authority to give the approval. He noted all persons, licensees or vendors, dealing with the Commission are charged with the responsibility of knowing the law and can't take advantage of a legal mistake made by the Commission. Commissioner White stated that if the Commission were to order the machines removed from the facilities, the licensees would have the right to a judicial challenge of the order. He stated that he feels it is his personal duty to vote to remove the machines from the facilities once it has been determined they are illegal in order to fulfill his obligation to the State. Additionally, he stated that he was prepared to approve an Order requiring the cash advance machines be removed within a short period of time, and deny those contracts on the agenda.

Chair Peyton stated that the Commission had requested staff to do some research on the various cash advance contracts in place. He noted that most of them expire sometime in 1999 unless the contract contains an automatic renewal clause. Chair Peyton stated that he had requested copies of a couple of the contracts, and upon reviewing the contracts, found they did not actually set forth the process required in order to obtain funds. He stated that he felt it was the practice itself that was contrary to State statute prohibiting the licensee from accepting credit for gambling purposes. He indicated that the process involves a telephone, the swiping of a credit card's magnetic stripe for authorization and then the check is printed out in the cashier's cage, sometimes payable to the casino, not the patron. The casino receives a fee for providing the service. Over the last year, cash advance transactions have amounted to approximately $68 million, generating $1.1 million in fees for the licensees. Chair Peyton stated his preference would be to ban this practice now – that it is destructive socially, as well as for the industry.

Commissioner Sealock stated that she understood the previous comments to mean that the cash advance contracts were illegal so the Commission does not have any choice in the matter. Commissioner White reiterated some of his earlier comments. He stated that he had prepared a proposed order, which states:

> That the Commission has previously approved contracts between its licensees and vendors for the installation and operation of telephones and related equipment on the premises licensed by the Commission whereby a customer, through a credit transaction with the direct and assistance of the licensee, is able to obtain funds for the use of gambling through the use of a credit card.

The Commission further finds that Section 99F.9(6) of the Iowa Code prohibits the licensee "from accepting credit cards as defined in 537.101(13) to purchase coins, tokens or other forms of credit being wagered on a gambling game.

The Commission further finds that the installation and operation of telephones and related equipment on premises licensed by the Commission as described in the first paragraph constitutes a violation of Section 99F.9(6) of the Iowa Code.

The Commission further finds that neither a licensee nor a vendor can rely upon the Commission's prior approval of contracts between said licensee and vendor for the installation of telephones and related equipment as described in the first paragraph since the Commission could not approve a relationship between a licensee and its customers which is prohibited by section 99F.9(6) of the Iowa Code.

On or before midnight on November 30, 1998, each licensee shall remove from the premises licensed by the Commission the telephone and related equipment as described in the first paragraph.

Commissioner White stated that the order contains a statement that it does not pertain to ATM machines, which permit electronic transactions between customers and their financial institutions without the direct assistance or involvement of the licensee.

Commissioner White stated that the proposed order is based on the Commission's authority under existing statutory requirements to enforce the ban on the use of credit for gambling purposes. He noted there is not a similar direct prohibition against ATM machines being located in gambling areas.

Chair Peyton requested a motion regarding the proposed order to allow additional discussion. Commissioner White moved to adopt the proposed order as read into the record. Commissioner Allen seconded the motion.

Chair Peyton called on Mr. Farrell for his opinion. Mr. Farrell stated that if the Commission approved the order litigation would be imminent, and suggested a closed session for purposes of discussing the issue with legal counsel pursuant to Iowa Code Section 21.4. Commissioner Sealock so moved. Commissioner Hansen seconded the motion. The motion was defeated on a roll call vote – 3-2, Commissioners Allen and White voting no. (See Order No. 98-202)

Mr. Farrell stated that he saw two legal issues: one being whether or not the practice and contract violates the Code section that Commissioner White referred to in his order. He sees it as a factual issue, and there are facts that go both ways. In a strict sense, the licensee is not accepting a credit card for chips or tokens in the same manner that a storeowner accepts credit cards for payment of merchandise. Mr. Farrell stated there are some facts that support Commissioner White's viewpoint. He stated that he does not have a legal recommendation on this issue, but does with regard to the second issue.

The second issue he sees is the Commission's interference with existing contracts. The Commission has approved these contracts in the past. He noted that the statute has existed since the beginning of the riverboat industry to the best of his knowledge. Mr. Farrell stated that the Commission would be much better served by dealing with this issue as the contracts come up for approval in the upcoming months. This would give them the opportunity to deal with the contracts under the rule currently under a Legislative hold, but will go into effect after the next Legislative session ends unless the Legislature takes action. Under the proposed rules, any contract coming up for approval regarding these cash advance devices would be in violation of the rule. In his opinion, the Commission could not approve any of these contracts now knowing it would be in violation of a rule that will be going into effect.

Chair Peyton asked Mr. Farrell if he was saying that if the rule would go into effect after the close of the Legislative session that it would automatically take care of all of the cash advance contracts.

Mr. Farrell stated there could be an issue as to whether or not the rule is an interference with the contracts. He stated the rule was promulgated through the rule making process, which is a Legislative-type process, and the licensees have been on notice since May of this year that the rule would go into effect. In his opinion, the arguments along these lines would be much weaker than if the Commission were to issue an order today disapproving a practice that has previously been approved. Mr. Farrell noted that once a licensee has submitted a contract for approval by the Commission, and the contract is approved, the licensee has the expectation that they can go forward with the contract. He stated that he did not feel the Commission could order the cancellation of those contracts without facing litigation, and not just judicial review litigation. The other types of litigation could include individual action against Commission members themselves.

Chair Peyton stated that he felt the biggest issue was that a request for an injunction staying the order until such time as the issue was finally decided would be filed. If this were the case, if the Commission issued the Order today, the likelihood of the machines being banned between now and the effective date of the rule are nil. Mr. Farrell stated he had good reason to believe that a Petition for Injunction would be filed. Chair Peyton noted that it was possible that a stay could delay the impact of the order beyond the time when the Commission's rule would take effect. Mr. Farrell stated that was possible. He noted that one of the elements of an injunction is to show the likelihood of successful merits. He noted that if an injunction were ordered, the Court would take a preliminary look at the merits of the whole argument. He indicated that usually a preliminary injunction is a good indicator of the final outcome.

Commissioner White reiterated that as a member of the Commission it is his duty to enforce Iowa law, he strongly believes that the contracts are illegal, and no person has any right to rely on the Commission's approval of contracts that they did not have the authority to approve. By approving the proposed order, he would have discharged his personal responsibilities, and whatever occurs after that is the responsibility of other individuals. Mr. Farrell stated there was a proper way and an improper way in which to

discharge the Commission's duties. He noted that when the Commission adopted rules last May regarding the cash advance machines, that was the beginning of the proper process for doing so. He noted that the rule would become effective sometime next spring unless the Legislature takes some type of action. It is also appropriate for the Commission to consider whether or not to approve these contracts as they come up for approval over the coming months.

Commissioner Hansen stated that he did not disagree with the long-range objective of Commissioner White's proposal, but does disagree with his proposed process. He asked Mr. Farrell if he had issued a formal AG's opinion supporting Commissioner White's position. Mr. Farrell indicated that he had not. Commissioner Hansen then asked Mr. Farrell if there was the potential for personal liability on the part of any Commissioner who might support Commissioner White's proposal should a licensee elect to take action. Mr. Farrell indicated that was a possibility, but declined to discuss the issue in great detail.

Chair Peyton asked Mr. Farrell if it was his opinion that the rule was designed to ban credit extended by licensees was a reasonable interpretation of statute. Mr. Farrell indicated Chair Peyton's statement was correct. He noted that the rule relied on two different sections of the Code, not just the section dealing with the acceptance of credit cards, but also the Commission's authority to control the premises of a licensee. Chair Peyton stated that he is not deterred by the possibility of personal liability, that it goes with the territory. In his opinion, if the Commission is making conclusions that are based on a reasonable interpretation of Iowa law, the Commissioners would be immune from tort liability.

Commissioner Hansen stated that he felt the Commission was obligated to seek a formal legal opinion from the AG's office, and abide by the recommendations made. Commissioner White stated this decision is within the Commission's jurisdiction, and they have a limited right to be wrong. He stated if the Commissioners are afraid of a decision being wrong, then they shouldn't be sitting on the Commission.

Commissioner Sealock proposed that now that the Commission is aware that the cash advance contracts are illegal, and rather than asking that existing contracts be broken, that the Commission no longer approve the contracts as they come before them for renewal. This motion puts the licensees on notice that these particular contracts will not be approved in the future. Commissioner Hansen seconded the motion.

Chair Peyton, noting that a substitute motion was on the floor, called for any further discussion. At this time, he restated what he felt Mr. Farrell had said: That Commissioner White's proposal was not totally wrong, but that it is a factual determination that could be decided either way; that there might be a more practical way to deal with the situation and accomplish the same thing and be more defensible if the Commission were sued. Mr. Farrell stated that he had read all of the contracts, but did not understand the practice because he had not been able to investigate it.

Hearing no further discussion, Chair Peyton called for a vote on the amendment. Commissioner Allen asked Commissioner Sealock if she was comfortable with the date of November 30th for removing the machines. Commissioner Sealock advised Commissioner Allen that date would be stricken. Chair Peyton stated that Commissioner Sealock's proposal would be a substitute Order drafted by Mr. Ketterer indicating that the licensees should not have any expectation that these types of contracts would be renewed. He noted that several of the contracts contained clauses indicating the contracts would automatically renew, and that the licensees should take the necessary steps to prevent that from happening. He noted that the Order could contain a reference to the pending rule. He stated that it is his understanding that if the rule goes into effect, it would prohibit this type of activity and could bring an earlier conclusion to some of the contracts. Commissioner Sealock stated that his synopsis was correct.

Hearing no further discussion on the substitute motion, Chair Peyton called for a roll call vote. The motion carried 4-1, Commissioner White voting no. (See Order No. 98-203)

Chair Peyton moved to the next agenda item, a discussion of compliance by Racing Association of Central Iowa with Iowa Code Section 99F.6(4)(a) and taking appropriate action thereto. He noted that he had a conversation with Tom Timmons, Director of Operations for PMR&C, last month on the procedure for determining distributions to charitable organizations. Since that discussion, he has written a letter to Tom Flynn, legal counsel for RACI, setting forth the manner in which he feels the statute should be interpreted. Chair Peyton stated that he had received a response from Mr. Flynn indicating there was a $5 million error in his calculations, which changes the amounts included in his letter. In his opinion, the purpose of this agenda item is to discuss the process more than the procedure for determining the amount available for distribution.

Bob Farinella, General Manager of PMR&C, indicated that Mr. Flynn had provided a response, which addressed the total dollar volume available to improve the facility and their anticipation of those amounts through the rest of calendar year 1998. He stated he feels there is a difference of opinion on how the funds are allocated and what constitutes "cash" at the facility. Mr. Farinella stated that he had compiled some data for fiscal year 1997 that he felt would help define this issue. He stated that when looking at the contributions made by all of the licensees, and the effectiveness in supporting the statutory requirements to contribute to civic and charitable organizations, the figures show that PMR&C issued 37.1% of its adjusted gross revenues in charitable contributions, or over $47 million. In the Council Bluffs area, the three licensees donated $9 million, or 3% of their adjusted gross revenues, to charitable organizations. In Dubuque, approximately $5.3 million was distributed, or 8.1% of adjusted gross revenues. The other licensees' contributions fell between .55% and 5%. Based on these figures, Mr. Farinella stated that PMR&C's contributions are far and above those of the other licensees, and Chair Peyton's suggestion that every last dollar should be given to charitable organizations is not prudent on PMR&C's part.

Chair Peyton stated that Mr. Farinella had not accurately portrayed his comments. Mr. Farinella reiterated that PMR&C has given more money to charitable organizations than

any other licensee. He stated that the procedure suggested by Chair Peyton violates PMR&C's fiduciary responsibility to manage the company to exhaust the last dollar. Chair Peyton took exception to this comment as well. Chair Peyton stated that the proposal he submitted reads exactly like the statute reads, and does contain provisions for capital expenditures. PMR&C's interpretation that the provision eliminates a licensee's ability to make capital improvements or requires the licensee to borrow money is false.

Mr. Flynn stated that RACI/PMR&C feel they are in compliance with the statute. In his opinion, the two sides are interpreting the statute differently. PMR&C feels that paying cash for the capital improvements that have been approved by the Commission is something that can be taken into consideration when computing the amount left for charitable distributions.

Chair Peyton stated that he has never said that PMR&C can not make capital improvements. Mr. Flynn stated that the difference in interpretation is where the line item should appear on the financial statement in order to determine net receipts available for distribution. PMR&C's interpretation of Chair Peyton's interpretation was how the capital improvements are shown when computing revenues available for net distribution. Chair Peyton stated that he had it before distributions to charity and Polk County. Chair Peyton stated that his computations were based on generally accepted accounting principles. Mr. Flynn stated that he felt Chair Peyton's calculations were correct, but doesn't feel the statute requires that conclusion. He noted that the statute doesn't address this particular issue. Mr. Flynn stated that if PMR&C has the cash available to pay for all of the capital improvements as they go, they should do so. Under PMR&C's interpretation of Chair Peyton's proposal, they feel they may have to borrow funds.

Chair Peyton asked if there were sufficient funds to pay for the capital improvements approved by the Commission. Mr. Flynn stated he felt there were sufficient funds. Chair Peyton questioned why there was any discussion about borrowing funds. Mr. Flynn explained RACI's interpretation of Chair Peyton's proposal: RACI may have $10 million available, but under his formula, it would be distributed to charity; however, in order to do that, PMR&C would have to borrow money to pay for some of the capital improvements. Chair Peyton indicated that the need to borrow would be based on the nature of the capital improvements. In his opinion, the statute does not allow PMR&C to have an overabundance at the end of the year, determine capital improvements they would like to make in the future, and then decide not to distribute the cash as it may be needed to pay for those capital improvements. He does not feel the statute allows that to occur.

Commissioner White stated that he felt the Commission had decided to look at this issue again in January during the October Commission meeting when PMR&C would have a better idea of their financial situation and what their plans were for the money available. He stated he wasn't sure where this discussion was going as the Commission didn't have any numbers to look at now. There is a difference in philosophy that is not going to change. He feels the only way to resolve the issue is to see the figures at the end of the year and what they propose to distribute to charitable organizations.

Chair Peyton stated that it is his understanding that PMR&C know what they are going to distribute - $4.5 million. He asked Mr. Flynn if PMR&C had any intentions of changing that figure. He stated that his point was how could PMR&C determine the amount available for distribution prior to the end of the year. Chair Peyton pointed out that the amount to be distributed is determined by the financial status at the end of the year, and is not a budgeted amount.

Mr. Farinella advised Chair Peyton that PMR&C developed a financial plan for the year, knowing what the costs and expenses will be, which then gives them an approximate amount available for distribution. He stated that it is PMR&C's intent to make the charitable distributions throughout the year. So far, they have been very close to that figure. Chair Peyton asked Mr. Farinella if more funds were available for distribution if they would do so. Mr. Farinella stated that if more funds were available, and the Board made that determination, they would do so. Mr. Flynn stated that if more funds were available, it would be PMR&C's obligation to distribute those funds. Commissioner White stated that he felt Chair Peyton's letter was a warning.

Commissioner Hansen asked Chair Peyton what his personal objective was on this issue. Chair Peyton stated that he wanted the statute to be followed. He stated that it is OK if PMR&C wants to budget a certain amount during the year for distribution to charitable organizations, but has a problem when it appears to supersede the statute. The amount to be distributed is determined by following a certain computation. Mr. Flynn stated that was not a problem, there is just a difference in interpreting how the figure is arrived at. He stated that RACI is in agreement that if more than $4.5 million is available for distribution it will be distributed. Commissioner White stated that it is PMR&C's responsibility to show cause for not distributing available funds, and the Commission can either accept or reject the argument.

Commissioner Hansen stated that he hoped the issue could be resolved at the next Commission meeting and was trying to get a better understanding of the Commission's objective. Chair Peyton stated that he had advised Mr. Flynn that he didn't want this issue to become a licensing issue, but as of now, it is a condition of the license. He indicated that he would prefer the parties reach an agreement as to how the process is going to be handled. Chair Peyton noted that part of PMR&C's problem is that they don't have any depreciation because there haven't been improvements to the facility, plus the fact that they don't own the facility.

Commissioner White, noting that the Commission had approved BRC's racing season, asked when they would be looking at PMR&C's request for racing dates. Mr. Ketterer indicated it would probably come before the Commission in January. Commissioner White stated that he didn't see how the Commission could put this issue into any kind of context without knowing where PMR&C sees itself going as a racetrack. Mr. Farinella stated that he felt a large portion of that plan has already been presented and approved by the Commission through improvements to the facility and a five-year operating contract with the horsemen. Commissioner White noted that some of the discussions had centered

around how the races are set up and the qualifications for the races. He asked if those issues would be addressed in the 45-day plan. Mr. Farinella indicated it would.

Following a short break, the Chair Peyton moved on to the contract approvals before the Commission. He called on the Belle of Sioux City (BSC). Monty Terhune, Director of Finance, presented the following contracts for Commission approval:

- Argosy Gaming – Intercompany Charges for September 1998
- Anchor Games – Modifies Existing Contract for Lease of 8 Anchor Games to 12 Anchor Games
- International Game Technology – 40 IGT Slot Machines (Replacements)
- MidAmerican Energy Company – 7 Year Contract to Lock In Energy Rates Prior to Deregulation
- Sioux City Engineering Co. – Additional Parking Facility

Commissioner White asked if the contract with Anchor Games was increasing the number of games on the boat. Mr. Terhune stated they were removing existing games, and would be increasing the number of Anchor Games on the vessel from 8 to 12.

Commissioner White stated it was his understanding that Sioux City Engineering had started work on the parking lot prior to Commission approval. Mr. Terhune stated that John Pavone, General Manager of BSC, had talked with Mr. Ketterer about the correct procedure to follow on this contract due to the time frame of the negotiations with the City of Sioux City, and the necessity of being able to start work as soon as possible due to the weather.

Mr. Ketterer stated that he had visited with Chair Peyton prior to the Commission's telephonic meeting the previous week, and talked about discussing the contract then, but it was not on the agenda. He noted that originally the City of Sioux City was going to bid out the parking lot; however, from a procedural standpoint, it turned out to be easier for the licensee to pay for the parking lot and then be reimbursed by the City. Commissioner White stated that his point was whether or not the Commission needed a rule to formally delegate authority to the Administrator to allow licensees to proceed with a contract prior to Commission approval. Mr. Ketterer indicated that if the Commission feels a rule is necessary, it could indicate that approval could be given after consulting the Chair of the Commission. He stated that he did not feel it was an issue. Commissioner White wondered if all of the licensees were aware of the policy that would allow them to contact the Administrator for authorization to proceed with a project requiring approval prior to the Commission's approval. He stated this could become more of an issue under the new Administrative Procedures Act.

Commissioner White moved to approve the contracts as submitted by BSC. Commissioner Sealock seconded the motion.

Commissioner Allen asked Mr. Terhune what BSC does with the slot machines that are being replaced. Mr. Terhune stated that during the original machine replacement earlier

this year, the machines were sold to a used equipment manufacturer. Some machines have been used for parts and are no longer useful. He indicated they have been working with IRGC to determine the procedure for destroying the necessary parts and the bodies will be returned to a dealer as scrap metal.

Hearing no further discussion, Chair Peyton called for the vote on the motion to approve the contracts. The motion carried unanimously. (See Order No. 98-204)

Chair Peyton then called on Ken Bonnet, General Manager of the Mississippi Belle II, who presented the following contracts for Commission approval:

- Masque Publishing, Inc. – License Agreement for Spanish 21 Card Game
- River Trails Transit Lines, Inc. – Bus Program
- Showroom Traffic Specialists – Promotion
- Williams Gaming Inc. – 8 Additional Video Games Previously Approved by IRGC

Commissioner Allen asked Mr. Bonnet about the contract with Masque Publishing. She asked if the Spanish 21 Card Game is an actual card game or a slot machine. Mr. Bonnet indicated that it is a deviation of Blackjack played on a Blackjack table with a slightly different layout. The player has several different options.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Sealock moved to approve the contracts as submitted by MB II. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-205)

Chair Peyton moved to the contracts submitted by Miss Marquette. As a representative could not be present, Terry Hirsch, Director of Riverboat Gambling for IRGC, presented the following contracts for Commission approval:

- Collins Outdoor Advertising – Billboard Advertising in SE Minnesota, SW Wisconsin, and NE Iowa locations
- JF Brennan Company, Inc. – Dredging Services in Preparation for 1999 Underwater Hull Inspection
- Mikohn Gaming – Caribbean Stud Table Rental
- Philips Bus Tours – Line Run Transportation to Property for SW Wisconsin and SE Minnesota Customers
- Sports World – Screenprinting, Signage, Supplies, Retail Clothing, etc.

Commissioner White asked Mr. Hirsch about the competitive bids for the dredging contract. Mr. Hirsch stated that JF Brennan is the sole source for this kind of service in that area.

Hearing no further questions, Chair Peyton requested a motion. Commissioner White moved to approve the contracts as submitted by Miss Marquette. Commissioner Hansen seconded the motion, which carried unanimously. (See Order No. 98-206)

Chair Peyton called on Jim Rix, General Manger of the Dubuque Diamond Jo (DDJ), who presented the following contracts for Commission approval:

- Baraboo SYSCO – Food Purveyor
- Brown, Winick, Graves, Gross, et al – Legal Work Relating to Non-Employee Issues
- Cottingham & Butler Insurance Inc. – Insurance Renewal
- Graphic Resources, Inc. – Advertising
- Greater Dubuque Health Insurance – Employee & Employer Contributions for Health Insurance Premiums
- Honkamp Krueger & Co., P.C. – Yearly & Quarterly Audit Reports, EZ Payroll, Software Services/Training, etc.
- IGT – Parts, Conversions & New Slot Machines (Replacements)
- Shuffle Master Gaming – Let It Ride Table Games and Poker Shufflers
- Treasurer, City of Dubuque – City Taxes

Mr. Rix indicated that the Commission had previously approved all of these contracts, but they are requesting approval of additional funds through the end of the year.

Hearing no questions, Chair Peyton requested a motion. Commissioner Sealock moved to approve the contracts as submitted by DDJ. Commissioner Hansen seconded the motion.

Commissioner Allen asked Mr. Rix what DDJ did with the machines that are being replaced at their facility. Mr. Rix stated they are sold to previously approved purveyors on the secondary market. Sometimes they are traded in, depending on the number of machines on the market. He indicated they normally trade the machines in, but if they can get a better deal from a third party, they will go that route.

Hearing no further discussion, Chair Peyton called for the vote. The motion carried unanimously. (See Order No. 98-207)

Chair Peyton moved to the contracts submitted by The President Riverboat Casino. Mark Lohman, General Manager, presented the following contracts for Commission approval:

- Browning-Ferris Industries of BFI of Iowa – Waste Disposal and Equipment Rental Supplier
- IGT – Agreement and Trust for 26 Wide Area Progressive Machines (Replacements)
- Sysco Food Service of Iowa, Inc. – Food Contract
- Approval of Unsecured Guarantee of Notes

Mr. Lohman introduced Ralph McClavick, Vice President of Finance for President Casinos, Inc., who is present to address any questions relating to the last contract approval request.

Commissioner Allen asked if the $25 million note placed the general partner holding the Iowa license in any jeopardy. Mr. McClavick stated that President Casinos had a $100 million bond in place that has a $25 million principal payment due in September 1999. Under this scenario, The President is buying back $25 million of the original $100 million bond and reissuing another $25 million in bonds which will extend the due date to the original date of the bonds.

Commissioner White noted that the interest rate had been reduced by 1 point. Mr. McClavick indicated that was correct, but that the fees related to the transaction erase the interest reduction.

Commissioner White moved to approve the contracts as submitted by The President Riverboat Casino. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-208)

Chair Peyton called on Harveys Casino Hotel. Stephen Roberts, legal counsel, advised that he would be distributing documents relating to the merger with Colony Capital. The Commission does not have to approve these documents, Harveys is simply keeping the Commission informed about the transactions. He stated that Ron Alling, legal counsel for Harveys' parent company would address the last contract approval request. Art Hill, Director of Finance for Harveys, submitted the following contracts for Commission approval:

- Aristocrat, Inc. – 7 Slot Machines (Replacements)
- Auto-chlor – Dishwashing and Cleaning Chemicals
- Berkel and Company – Test Pile Support Locations at Proposed Site of Parking Garage
- Coffee Suite – In-room Coffee Packets
- Harkers Meats – Food Products
- Hawkeye Foods – Food Products
- Hunter Packaging Limited – Guest Room Amenities
- Inter-American Data – Upgraded IBM AS-400 Mainframe Computers
- Marking Refrigeration – Refrigeration Repair and Services; Juice Products
- Micros Systems – Point of Sale Equipment
- Millar Equipment – Elevator Maintenance Agreement
- Omaha Steaks – Food Products
- Omni Center Business Park – Rental of Storage Space
- Paricom – Computer Supplies, Repair, Consulting and Internet Services
- Pratt Audio Visual – Audio Visual Products
- Southwest Airlines – Sale of Hotel Rooms at Contracted Rates
- Studio 23 – Artwork and Design Services
- VLC – 6 Slot Machines to be obtained on a 60-day Trial Basis (Replacements)
- Williams Gaming Inc. – 8 Slot Machines (Replacements)
- Williams Gaming Inc. – 13 Monopoly Gaming Devices (Replacements)

- Request for Approval of Amended and Restated Credit Agreement

Mr. Hill advised the Commission that in the past Harveys has retained the slot machines that were being replaced unless the manufacturer would take back their product. He stated that they have not resold any slot machines to third parties at this time. This practice is what precipitated the need for additional storage space at the Omni Center.

Mr. Hill noted that Harveys paid out the first Megabucks jackpot in Iowa – over $200,000 on a Jeopardy machine within the first two weeks of operation.

Commissioner White requested that in the future Harveys show other bids received when submitting a contract with an out-of-state vendor. He reminded Mr. Hill that the Commission expects the licensees to show the amount of other bids received on related party and out-of-state bids.

Commissioner Hansen moved to approve the first 20 contracts as submitted. Commissioner Sealock seconded the motion. Commissioner White advised the licensee that he would not vote to approve contracts at the next Commission meeting that did not contain the necessary supporting information. The motion carried unanimously. (See Order No. 98-209)

Mr. Alling advised the Commission that he had provided IRGC staff with two copies of the loan documents with a summary letter outlining the terms of the loan agreement. He noted that the letter indicated an agreement between all parties was close. Mr. Alling stated that 13 banks and 17 different law firms are involved in the process, and it is hoped that final comments from the banks' counsel would be received by Monday. He requested approval from the Commission for the credit agreement provided the final agreement is substantially the same as presented to them.

Mr. Ketterer advised the Commission that he would recommend approval of the loan agreement as long as Mr. Alling would agree to calculate the interest rate in the event the Commissioners asked the question.

Commissioner Sealock moved to approve the loan document with the above condition. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-210)

Chair Peyton called on Ameristar Casinos. Jeff Terp, Vice President of Business Development, presented the following contracts for Commission approval:

- Kinseth Hotel Corporation – Constructing an Additional 50 Units to Existing Hotel Complex
- Reinhart Institutional Foods, Inc. – Frozen and Specialty Prepared Foods
- Vicom Midwest – Phone Equipment
- VLC – 20 "Coin Free" Video Machines (Replacements)

Commissioner Allen, referring back to Ameristar's Master Plan for expansion, noted that Ameristar was also planning to build another hotel. She asked how the contract with Kinseth would impact that, and how many rooms there would be. Mr. Terp stated that the master plan included two hotel towers. He noted that the focus of the Master Plan has changed based on her comments over the last several months: 1) She wanted to see land-based improvements prior to improvements on the riverboats; and 2) Her request that Iowa businesses be used and/or involved in the expansions. Mr. Terp stated that Ameristar needed additional hotel rooms, so they approached Kinseth Hospitality about adding 50 rooms to their existing facility. Kinseth's facility will also include 10,000 square feet of convention space. The second phase of the project, although not included in this contract, will be a second hotel to be built by Kinseth. This facility will be connected to the other facilities via a walkway to the convention center.

Commissioner Allen asked if she was hearing that the Kinseth expansion would not have any impact on Ameristar's expansion as approved in April. Mr. Terp indicated that was correct. He indicated that in all probability the number of rooms proposed would not be sufficient over the long term. Commissioner Allen asked how many rooms were approved in April. Mr. Terp stated that he thought it was 150 rooms in each tower, and they currently have 300. The current Kinseth hotel has 50 rooms, the new facility will have another 50, and the second Kinseth expansion facility will have 150 rooms. Mr. Terp stated that Ameristar is trying to build an entertainment complex with multiple venues as portrayed in the Master Plan in April.

Commissioner White asked Mr. Terp why the Commission was just now seeing a contract with Vicom Midwest when the contract was entered into in July. Mr. Terp stated the contract is just now reaching the $50,000 threshold. When they entered into the contract, they did not anticipate reaching that mark prior to the end of the year.

Commissioner White moved to approve the contracts as submitted by Ameristar Casino. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-211)

Chair Peyton then called on Lady Luck Bettendorf. Nancy Donovan, General Manager, presented the following contracts for Commission approval:

- Acme Business Machine – Upright Micros System, and add Additional Point of Sale Locations on Property
- Design Build – Buildout of Lady Luck Convention Center Kitchen, New Administration Offices in Lady Luck Center, and Remodeling of Celebrations Buffet (Transaction Amount Increase)
- US Foodservice – Convention Center Facility Equipment & Supplies (Transaction Amount Increase)
- SYSCO Food Service – Primary Food Vendor (Transaction Amount Increase)
- Edward Don Company – Purchase Additional Flatware & Smallwares for Lady Luck Center and Employee Dining Room Supplies (Transaction Amount Increase)

- Mikohn Gaming Corporation – New Slot Signage (Transaction Amount Increase)
- Targeted Specialty Services, Inc. – Equipment for Lady Luck Convention Center (Transaction Amount Increase)
- Hampton Inn – Backup Lodging to Accommodate Guests when Lady Luck Hotel is sold out (Transaction Amount Increase)
- MidAmerican Energy Co. – Gas & Electric Utility Service (Transaction Amount Increase)
- IGT – Agreement & Trust for 8 Wide Area Progressive System Machines (Replacements)
- Request for Approval of Bettendorf Riverfront Development Company Corporate Restructuring

Ms. Donovan advised the Commission that Curt Beason, legal counsel was present to address any questions regarding the corporate restructuring request. It was decided to handle this request separately from the other contract approval requests.

Commissioner White asked Mr. Hirsch if the agreements submitted for the wide area progressive machines were in compliance with IRGC rules. Mr. Hirsch indicated they were.

Commissioner White moved to approve the contracts as submitted by Lady Luck Bettendorf. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-212)

Mr. Beason stated that the request for reorganization provides that the current 50% holder of Lady Luck Bettendorf, Bettendorf Riverfront Development Company (BRDC), a limited liability company composed of Irene Goldstein and her three sons, be transferred to a corporation with the same identical beneficial ownership. This structural change is being done at the request of the accountant for BRDC because of tax law changes. All contracts previously held by BRDC will be assigned to the new entity. The new corporation will have the same reporting requirements with regard to IRGC.

Hearing no questions, Chair Peyton requested a motion. Commissioner Hansen moved to approve the restructuring request. Commissioner Allen seconded the motion, which carried unanimously. (See Order No. 98-213)

Chair Peyton then called on Dan Kehl, General Manager of Catfish Bend Casinos, L.C., who presented a contract with Williams Gaming, Inc. for the purchase of 10 slot machines.

Hearing no discussion, Chair Peyton requested a motion. Commissioner Sealock moved to approve the contract as submitted. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-214)

Chair Peyton acknowledged Bruce Wentworth, General Manager of Dubuque Greyhound Park & Casino (DGP&C), who presented the following contracts for Commission approval:

- A & G Electric Company – Casino HVAC and Electrical Service
- Aristocrat, Inc. – Participation Lease w/Purchase Option for 6 Games (Replacement)
- Casino Data Systems – Participation Lease w/Purchase Option for 8 Games (Replacement)
- Giese Sheet Metal, Inc. – Casino HVAC and Electrical Service
- International Game Technology – Iowa Wide Area Progressive System Agreement and Declaration and Agreement of Trust
- R.W. Borley Advertising – Promotional Items
- United Way – Corporate Pledge to the Annual United Way Campaign
- VLC – Exercise of Purchase Option on Previously Approved Participation Lease – 12 games
- WMG Gaming, Inc. – Purchase of 10 Games (Replacement)

Commissioner Allen asked Mr. Wentworth what DGP&C does with the machines that are being replaced. Mr. Wentworth stated that they really have not had to deal with that situation at this time. He indicated DGP&C did have some machines in storage, but have not sold any to the secondary market. Mr. Wentworth stated that when they reach that point, DGP&C would probably handle the situation in the same manner as previously described.

Hearing no further discussion, Chair Peyton called for a motion. Commissioner Hansen moved to approve DGP&C's contracts as submitted. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-215)

Chair Peyton then called on Bluffs Run Casino (BRC). Doug Okuniewicz, General Manager, presented the following contracts for Commission approval:

- Acceptance Insurance Company – Insurance Binder for Worker's Compensation And Employer's Liability (RP)
- Anchor Games – Lease of 7 Wheel of Gold; 8 Safebuster and 6 Totem Pole Slot Machines (Replacements)
- Ancona Midwest Foodservices – Grocery Vendor
- Coca-Cola Mid-America – Soft Drink Supplier
- Fisher-Anderson, L.C. – Lease Agreement for Konica 7060 Copier
- Global Cash Access, Inc. f/k/a ComData – Cash Advance Service
- Global Cash Access, Inc. f/k/a TeleCheck – Check Cashing Service
- Line-True Photo's Inc. – Photo Finish and Timing Service for Races
- Mutual of Omaha – Insurance Package for Medical, Dental and Life Insurance
- NDC Check Services – Check Cashing Service
- Redland Insurance Company – License and Permit Bond (RP)

- Redland Insurance Company – Insurance Binder for Real and Personal Property, General and Liquor Liability, and Garagekeeper's Legal Liability (RP)
- Royal Insurance Co. of America – Insurance Binder for Umbrella Liability
- Silicon Gaming – Iowa – Free Trial of 50 Odyssey Slot Machines (Replacements)
- SilverStone Group – Administration of Employee Flexible Spending Accounts (RP)
- Sysco Corporation – Primary Grocery Vendor
- WMS Gaming, Inc. – Purchase of 20 Williams Slot Machines (Replacements)

Chair Peyton advised Mr. Okuniewicz that he wished to handle the contract with Global Cash Access for cash advance services separately as he felt it was the kind of arrangement discussed under an earlier agenda item. Mr. Okuniewicz concurred.

Commissioner White moved to deny the contract with Global Cash Access for cash advances services. Commissioner Sealock seconded the motion.

Chair Peyton called for any further discussion. Lyle Ditmars, legal counsel for Iowa West Racing Association (IWRA) asked if it was appropriate, based on the Commission's earlier actions, to assume that regardless of the factual scenario surrounding the contract that it would not be approved. Chair Peyton asked Mr. Okuniewicz to explain to the Commission the procedure that would be followed under this contract. Mr. Okuniewicz stated that if the customer did not know their PIN number, or chose not to use their PIN number, they would go to another device that is owned by this company, swipe the credit card, and enter the amount of money they would like to receive as a cash advance. At that time, a draft is printed inside the teller's cage for the purpose of comparing the identification of the person who swiped the card and checking the signature to insure that the card has not been stolen. The individual is then allowed to sign the draft in order to receive the cash. He indicated this process is followed for security reasons because without a PIN number, individuals could continue to withdraw cash on a stolen credit card. At this time, Mr. Ditmars asked Mr. Okuniewicz a series of questions pertaining to the above contract. Chair Peyton asked Mr. Okuniewicz if the draft was made payable to BRC. Mr. Okuniewicz stated that he thought it was, but was not sure, and he wasn't sure that was necessary.

Mr. Farrell asked Mr. Okuniewicz if BRC accepted credit cards as payment for merchandise sold at the facility, and if so, how the two transactions were different. Mr. Okuniewicz indicated the main difference would be the draft being issued for them to sign, although the customer would sign a receipt authorizing the charge if a credit card was used to purchase food or other merchandise. Mr. Farrell noted, that in this case, BRC is not making a decision on whether or not to issue credit, the card company is doing so.

Commissioner White advised Mr. Farrell that the statute prohibits the casino from accepting credit cards for the purpose of gambling, whether the casino or bank is offering

the credit. Mr. Farrell stated his questions were designed to determine any distinctions between credit card transactions for food and merchandise versus the procedure followed under this particular contract. Commissioner White stated that he felt the funds were being used for gambling, not food or merchandise.

Hearing no further discussion, Chair Peyton called for a vote on the motion to deny the contract with Global Cash Access, Inc. for cash advance services. The motion carried unanimously. (See Order No. 98-216)

Commissioner White then requested that the contracts with Acceptance Insurance Company, Royal Insurance Co. of America and both Redland Insurance Company contracts be pulled and handled separately. The contracts with Acceptance and Redland are related party contracts, while the contract with Royal Insurance is with an out-of-state company.

Mr. Okuniewicz introduced Edward Glenn to the Commission. He indicated that Mr. Glenn had assisted in the preparation of the supporting documents with regard to the insurance companies.

Commissioner White stated that he did not feel BRC made a good faith attempt to get competitive bids from companies that write the same kind of insurance for which they are submitting contracts with related party companies. He further stated that if licensees choose to submit related party contracts for Commission approval, the burden of proof is on them to prove to the Commission that it is the right contract.

In discussing the contract with Acceptance Insurance Company for the worker's compensation and employer's liability, Commissioner White noted that the Commission looks at Iowa vendors/non-Iowa vendors and related party contracts and has a higher level of proof required for approval of these contracts. He stated that he is more concerned with related party contracts. Commissioner White noted that with this particular contract, it looked like BRC had contacted a number of insurance companies that don't write this type of insurance for racetracks. He stated that he had requested staff to determine what companies wrote these kinds of insurance for the other racetracks. He noted that CNA Insurance out of Chicago has written the worker's comp insurance at DGP&C, while Virginia Surety Company writes it for Prairie Meadows Racetrack & Casino (PMR&C) through an Iowa office. Commissioner White asked Mr. Okuniewicz why he (Commissioner White) had evidence that there are insurance companies that write casino insurance while BRC has submitted evidence from companies that do not as justification for the related party contract.

Mr. Glenn advised Commissioner White that his assumption that the companies approached by BRC do not write worker's comp or have not written casino insurance was incorrect. He noted that some of the companies have written such insurance in the past, but some have declined to do so this year for various reasons. Mr. Glenn stated they had approached EMC about the worker's comp insurance. He noted they had written it for BRC in the past, but only under the requirements of the State's Assigned Risk Plan,

which allowed BRC to go the Assigned Risk Plan where the coverage was assigned to an involuntary writer of the coverage. Mr. Glenn cited EMC's poor service in helping BRC reduce accidents through loss control and loss prevention activities. He noted that Acceptance is the only company BRC has found that is willing to write the coverage voluntarily at this time. With Acceptance's loss control efforts, the experience modification factor at BRC has dropped from 1.62 four years ago to 1.35 this year, and BRC expects the number to drop again after January 1, 1999.

Commissioner White then moved to deny the contract with Redland Insurance Company for general liability insurance, with a $6,000 premium. He noted that CNA writes this insurance for Dubuque, and TransAmerica writes this insurance for PMR&C. In his opinion, BRC approached companies that don't write the required insurance in order to justify the related party contract. Commissioner White stated that the related party contracts fail to meet the standards established for approval of related party contracts.

There was a lengthy discussion about the lack of supporting documentation from the insurance companies. It was noted that most of the letters submitted by BRC indicate that the company does not write that particular kind of insurance, not that didn't have time to prepare a bid, or had elected to not write that type of insurance any more.

Mr. Okuniewicz stated that Redland Insurance Company has done a very good job for BRC. He distributed a third-party letter from Rick Grennan, President of Grennan & Associates, Inc., who had reviewed all of the insurance contracts and indicated that Mr. Glenn had done a good job of locating insurance coverage.

Commissioner White stated that he was not satisfied with the documentation presented with regard to the Acceptance and Redland contracts. He moved to deny approval of the contracts relating to the worker's compensation with Acceptance and the real and personal property, general and liquor liability, and garagekeepers's legal liability insurance. Commissioner Allen seconded the motion to allow for additional discussion.

Chair Peyton stated that he felt the letters submitted in support of the related party contracts were a sham. He indicated that BRC's refusal to take the time and effort to follow the correct process was causing more scrutiny than was necessary. Chair Peyton voiced his agreement with Commissioner White's comments.

Mr. Glenn noted that several insurance companies indicated they did not write the kinds of insurance in question, and would not take the time to send a letter to that effect. Chair Peyton suggested that Mr. Glenn should have written a letter providing that information. Commissioner White wondered what event had occurred to prevent the other companies from submitting a bid.

Commissioner Hansen suggested that BRC hire an insurance consultant to legitimatize the problem for Commissioner White. He indicated that all of the documentation submitted was worthless. BRC's problem is that their rates are not based on manual rates

due to an excessive amount of claims, raising red flags for any company that might consider BRC as a possible risk.

Following additional discussion, Commissioner Sealock moved to table this issue until the next Commission meeting as it was very apparent no consensus was going to be reached at this meeting. Commissioner Allen seconded the motion. Mr. Okuniewicz indicated that the worker's comp insurance has a January 1 renewal date, while the other contract in question has a December 1 renewal date.

Commissioner Sealock indicated this might be one of those situations that would require an emergency telephonic Commission meeting.

Chair Peyton requested a roll vote on the motion to table action on these two contracts. The motion carried unanimously. (See Order No. 98-217)

Commissioner White moved to approve the contracts with Redland Insurance Company for the License and Permit Bond and Royal Insurance Company of America. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-218)

Chair Peyton noted that several of the contracts had not been addressed. Commissioner Sealock moved to approve the balance of the contracts for discussion purposes. Commissioner Hansen seconded the motion.

Mr. Ketterer stated that the NDC contract contained a reference to credit card advances. He asked if BRC utilizes that portion of the contract, or just for cash advances. Mr. Okuniewicz stated they did not. Mr. Ketterer suggested incorporating a reference to that effect in the motion in order to be consistent with the Commission's action on the Global Cash Access contract. Mr. Farrell stated that the second contract with Global Cash Access also contained a reference to credit cards. He stated it was his understanding that BRC was only utilizing these companies to assist in the cashing of checks.

Linda Vanderloo, Director of Racing/Administration for IRGC, suggested that the Commission's motion with regard to the contract with Silicon Gaming contain the provision that if the machines perform satisfactorily BRC would have the ability to go ahead and purchase them without coming back before the Commission. Chair Peyton indicated that he thought that was understood with the contract approval.

Hearing no further discussion, Chair Peyton called for the vote on the motion to approve the remaining BRC contracts with the above stated conditions. The motion carried unanimously. (See Order No. 98-219)

Chair Peyton then called on PMR&C. Jack Reid, Director of Slot Operations, presented the following contracts for Commission approval:

- Aristocrat – Purchase 40 Slot Machines (Replacements)

- Bally Gaming – Purchase 13 Slot Machines (Replacements)
- Bally Gaming – Purchase 24 Slot Machines (Replacements)
- Bally Gaming – Lease 6 Slot Machines (Replacements)
- IGT – Purchase 39 Slot Machines (Replacements)
- Williams Gaming – Purchase 52 Slot Machines (Replacements)

Hearing no discussion concerning the contracts, Chair Peyton called for a motion. Commissioner White moved to approve the contracts as submitted by PMR&C. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-220)

Following a short break, Chair Peyton proceeded to the hearings before the Commission. The first hearing was an appeal by IRGC of the Administrative Law Judge's Decision in an appeal filed by David Essman.

Mr. Farrell advised the Commission that the appeal was the result of a race run at PMR&C during the last meet. Mr. Essman is a jockey, and his wife, Vicky Warhol, also rides as a jockey at PMR&C. During this particular race, both were riding; Ms. Warhol's horse leading and Mr. Essman's was in second place. At the end of the final turn, Mr. Essman's horse veered to the right toward the middle of the track causing two other horses to go further to the right in an attempt to pass the leading horses. Even though this event did not have an impact on the final outcome of the race, the Stewards still had to determine whether or not Mr. Essman's horse interfered with those horses. The Board of Stewards determined there was intentional interference and suspended Mr. Essman's license for 30 days. Another issue in the case was whether or not Mr. Essman was trying to help his wife win the race. Noting that the winning jockey's share of the purse is considerably higher than second, third or fourth, Mr. Farrell stated that IRGC attempted to make the argument that it was Mr. Essman's intent to make sure that his wife would win the race. The Board of Steward's Decision was appealed to an Administrative Law Judge (ALJ), who determined there was intentional interference on Mr. Essman's part, but did not intend to help his wife win the race. Mr. Farrell stated he did not have a problem with the ALJ's decision on that issue, or his decision to reduce the suspension to 15 days, but with the timing of the suspension. The appeal period after the Decision was issued by the ALJ indicated the suspension would start on the last day of the racing season at PMR&C. The Board of Stewards feels it is very important that suspensions, in terms of the track at PMR&C, are served during the racing season. It is also their opinion that a suspension served at another track will not be as effective. The Board of Stewards would like to see Mr. Essman's suspension start at the beginning of the next racing season at PMR&C. Mr. Farrell also advised the Commission that there was some question as to the whether the Notice of Appeal he filed would stay Mr. Essman's suspension. He noted that the ALJ, in a Motion to Reconsider, stated that the Notice would stay the suspension, and that he was willing to credit Mr. Essman with five days already served. Mr. Farrell asked that Mr. Essman serve the remaining 10 days of his suspension at the beginning of the next race meet. He indicated that he did send a letter to Rick Olson, legal counsel for Mr. Essman, on the third day after the suspension would

have occurred indicating that the Notice of Appeal would have stayed the suspension and that Mr. Essman could race immediately.

Mr. Olson advised the Commission that if an individual is suspended in Iowa, that suspension also bars the individual from riding in any other jurisdiction. He noted that Mr. Essman typically rides at The Woodlands in Kansas following the conclusion of PMR&C's meet. Mr. Olson stated that he was also confused as to whether or not the Decision of the ALJ reducing the suspension from 30 days to 15 days would automatically stay the suspension in effect at that time. He noted that Mr. Ketterer had authorized a stay based on the fact that a hearing would be held in front of an ALJ within three weeks. The hearing was held the first week of September, and the Ruling was issued September 17, 1998. Mr. Olson stated that Mr. Farrell waited until 8 days after the Ruling was received to file a Motion to Reconsider, and then filed a Notice of Appeal and a request to stay the suspension before the Motion to Reconsider had been ruled upon. He noted, that at this time, Mr. Ketterer had not stayed the suspension. He subsequently received an Order from the ALJ indicating that if an Appeal had been on file, it would have automatically stayed Mr. Essman's suspension. Mr. Olson stated it was his position that once the case had been appealed to the Commission, the ALJ lost jurisdiction and could not then start entering Rulings that had not been entered prior to the Notice of Appeal being filed. He stated that Mr. Essman has not ridden since the end of PMR&C's meet. Jockeys are named to mounts anywhere from 2-4 days before the actual race. Mr. Essman did not employ an agent at The Woodlands because he would be serving his 15-day suspension. Mr. Olson stated that it is their position that Mr. Essman has already served the 15-day suspension. Should the Commission determine that the suspension has not been served, it is their position that the remaining 10 days should be served immediately, not postponed until the beginning of the PMR&C meet in 1999. He feels that is vindictive, and that this issue should not be changed by the Commission. The argument was made before the ALJ, and he chose to rule that the suspension should be served immediately, and reiterated that in the Decision on the Motion to Reconsider. Mr. Olson stated that he felt the 15-day suspension, while a reduction from the original 30-day suspension, was still severe. Typically, jockeys found guilty of reckless riding or interference only face a 5-day suspension. In his opinion, the ALJ did take into consideration the fact that Mr. Essman would not be riding at PMR&C during the period of suspension.

Chair Peyton opened the floor for questions. Commissioner White asked who originally suspends licenses for infractions. He referred to Iowa Administrative Rule 491-4.7. Mr. Farrell advised him that the Board of Stewards at the racetracks is similar to the Gaming Representatives at the casinos, and they make the initial determination. If their decision is appealed, then it is submitted to the ALJ. Commissioner White noted that the rule allows the individual to apply to the Administrator for a stay. Mr. Farrell indicated that was correct. He stated that the Board of Steward's Ruling provides an effective date for the suspension to begin unless they appeal the decision to an ALJ and request a stay from the Administrator.

Following a discussion on some of the issues raised during the presentations by legal counsel and current administrative rules, Mr. Ketterer held a brief discussion with both legal representatives. Mr. Ketterer stated that he felt the Commission needed to receive some kind of documentation from Mr. Olson stating that Mr. Essman served the 15 days at The Woodlands in Kansas, in which case the Commission would not pursue the additional 10 days. He also stated that he wanted to establish the fact that the Board of Stewards and Commission have the right to set the penalty and the dates they choose as that plays an important part in determining how long the penalty will be.

Mr. Olson stated that he was not sure he could get a letter from The Woodlands stating that Mr. Essman had served the suspension. Mr. Farrell stated that he could accept a statement from Mr. Olson regarding the fact that Mr. Essman did not ride at The Woodlands and has served the 15-day suspension.

Commissioner White asked Mr. Ketterer if it were possible to work on an administrative rule addressing the fact that the Commission has the authority to establish the time frames in which a suspension would be served. Mr. Ketterer indicated he could do so.

Chair Peyton asked Mr. Farrell what kind of action he was asking of the Commission. Mr. Farrell stated that he would like an acknowledgment of the above principle as it is very important. Chair Peyton asked if he was looking for a Stipulation. Mr. Farrell stated that the Stipulation should indicate that the Board of Stewards and the Commission have the power to impose the dates to insure that they occur within the racing season, but that in this particular case due to confusion over whether or not Mr. Essman's stay was continued, the Commission will recognize the fact that the 15-day suspension has been served. Mr. Olson stated that he agreed, and added that the notice was important to all horsemen at PMR&C that this situation was possible. It is also another negotiating point.

Commissioner Hansen moved to approve the Stipulation as stated for the record. Commissioner White seconded the motion, which carried unanimously. (See Order No. 98-221)

Chair Peyton moved to the hearing regarding violations of Iowa Code Section 99F.9 at BRC – underage gambling. Mr. Ketterer advised the Commission that IRGC staff had entered into a Stipulated Agreement with BRC. This particular incident involved two underage individuals who entered with two adults at the south entrance. Identification was requested. When it was determined the two were minors, they were sent to the Clubhouse. Eventually they entered the casino floor through the back door of the buffet area when the buffet was closed and no security officer was present. The individuals were on the casino floor for 57 minutes – one gambled for 13 minutes and the other for 16 minutes at 7 different banks of machines. No alcohol was consumed. One minor had contact with a change person. Mr. Ketterer stated that since this incident BRC has instituted a policy effective November 16 that prohibits minors on the Clubhouse level. They will only be allowed in the Grandstand level during live races. In compliance with the Stipulated Agreement that was approved at the October meeting, the parties agreed on a $20,000 administrative penalty. Mr. Ketterer recommended approval.

Commissioner White moved to approve the Stipulated Agreement as presented. Commissioner Sealock seconded the motion, which carried unanimously. (See Order No. 98-222)

As there was no Public Comment or additional Administrative Business, Chair Peyton called for a motion to adjourn. Commissioner Hansen so moved. Commissioner Sealock seconded the motion, which carried unanimously.

MINUTES TAKEN BY:

Julie D. Herrick CPS

JULIE D. HERRICK CPS