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## Minutes

### Oregon Racing Commission's Fiscal and Advisory Committee

October 19, 2023

#### Meeting Detail

The Oregon Racing Commission's (ORC) Fiscal and Advisory Committee met at 9:00 a.m. Thursday, October 19<sup>th</sup>, 2023, in person at the Portland State Office Building, 800 NE St., Room 1E-70, Portland, OR, and via Zoom videoconference.

#### Call to Order

Executive Director Connie Winn called the meeting to order at 9:00 a.m. Roll call was conducted by Karen Parkman.

#### In Attendance

**Staff:** Executive Director Connie Winn; Karen Parkman, Program and Administrative Coordinator; Kelly Routt, Assistant Attorney General (AAG)

**Other Attendees:** Russel Fine, President – Game Play Network; Gene Chabrier, VP Regulator Affairs and Business Development – Xpressbet; Andrew Silver, Counsel/Online Gaming Compliance – Churchill Downs; Nelson Clemmens, President – AmWest Entertainment; Andrew Moore, General Manager – FanDuel/TVG; Lynnelle Fox Smith, Executive Director – Oregon Thoroughbred Owners and Breeders Association; Greg Avioli, Gameplay Network; Thomas Cassidy, TVG; and Cindy Ochsner, AmWest Entertainment

#### Excused

None

#### NEW BUSINESS:

##### Review of proposed language – OAR 462-220-0030(12)

Micah Lloyd read the new wording that would be added:

“An applicant may have their site reviewed to ensure that game and wagering operations do not conflict with Oregon constitution and state statutes prior to approval of a license by the commission.

Subsection A: During ORC audits, reviews with ensure that game and wagering operations do not conflict with the Oregon constitution and state statutes.

Subsection B: All requests for updates to the plan of operations will include ensuring that game and wagering operations do not conflict with the Oregon constitution or state statutes.

### **Review of proposed language – OAR 462-220-0070(2)**

Mr. Lloyd read the new wording:

“During ORC audits, wagering technology and/or interface may be evaluated to ensure it does not violate any Oregon law or constitutional limitations or prohibition.

Mr. Lloyd explained that the new wording for both rules is a direct result of the recommendations received from the Secretary of State audit.

Greg Avioli (Game Play Network) expressed that when they read the new proposed language, in the context of the audit, it was clear that they wanted to define allowable marketing activities for an ADW in relation to casino-like activities. However, Oregon statute has not defined what a casino is. Therefore, he believes trying to address the issue through regulation is not the best approach, as the constitution is not clear as to what constitutes a casino. He recommended allowing the legislature to define what a casino is or is not, and then the ORC can write regulations that are consistent at that time. He also recommended adopting the regulation of other state licensing agencies, which essentially states that ADWs by accepting the license are deemed to know, understand, and comply with ORC regulations. This idea is not one that would be disputed but needs to be officially adopted into the language as a regulation to be complied with.

Micah Lloyd asked Mr. Avioli if he could provide specific language provided by other jurisdictions that would be acceptable. Mr. Avioli responded with the Oregon language which states: “Acceptance of a state gaming license or renewal thereof by a licensee constitutes an agreement on the part of the licensee to be bound by all of the regulations of the commission, as the same now or may hereafter be amended or promulgated.”

Andrew Silver asked if the text that was shared could be made readily available to all in attendance. Administrative Assistant, Maleah Thom was not available to share her screen at that time, so discussion moved forward.

Gene Chabrier commented that he supported the language proposed by Mr. Avioli. Director Winn countered by asking if there were additional recommendations on the originally proposed language, in the case that the newly proposed language was denied by legal counsel. Mr. Chabrier

said he did not at this time, but if the new language does come back then he will comment on the old language at that time.

Nelson Clemons commented that he also supported the newly proposed language. One of his concerns was that when legislation changes, they are not always noticed by the state or commission of those changes. If the language focused on the commission and not the broad state legislation, it would be easier for the ADW's to deliver compliance.

Andrew Moore stated he had no objections to anything the others had already said.

Micah Lloyd clarified with Mr. Avioli that the language he proposed was intended to replace both changes to the language proposed by the ORC. The goal was to create a more succinct and clearer regulatory framework and remove ambiguity. He clarified that all the ADW go through great lengths to ensure compliance, and they want to be clear on how the ORC goes about enforcing and setting those regulations, which is not clear in the ORC proposed language.

Maleah Thom shared a word document to the meeting screen with the newly proposed language, which read: "Proposed alternative wording: Acceptance of a state gaming license or renewal thereof by a licensee constitutes an agreement on the part of the licensee to be bound by all of the regulations of the commission as the same now are or may hereafter be amended or promulgated."

Director Winn reported that if everyone agrees on this language, then the process would be to determine a fiscal impact, if any, and then for DOJ to review the recording to determine if it can be moved forward. Mr. Lloyd added that they would also have to determine if it met the demands of the audit request.

Andrew Silver asked for clarification if the new wording was to replace one or both new proposed sections from the ORC. Director Winn and Mr. Lloyd responded that DOJ would have to review and get back to them. Mr. Silver stated he had no objection either way. There were no other objections from any ADW representatives.

### **Fiscal Impact Committee**

Director Winn stated that the next step was to determine the fiscal impact of the new language and select a representative to submit the form which reflects the new language.

Gene Chabrier led the discussion on fiscal impact on the industry and/or the commission. None of the ADW representatives saw any fiscal impact from the new language. However, Russel Fine did see potential negative impact to the ADWs resulting from the language proposed by the ORC as it would require a much higher level of scrutiny and detail on both sides during reviews that could result in a lot more time required for discussion and interpretation of requirements. Director Winn

suggested reviewing fiscal impact from all three proposed languages, so that DOJ could review them all. Mr. Chabrier also added that in the initial language, the term “review” itself is open to interpretation, nor is it clear who would be conducting said review or enforcing the findings. The new language clarifies that it is the ORC regulating and reviewing ADW compliance. He does not see any fiscal impact from the newly proposed language. Nelson Clemmens stated that he did not see a material impact from the new language. He agreed to the previous comments on the other language. Andrew Moore, Tom Cassidy, and Lynnelle Fox Smith agreed.

Mr. Chabrier summarized that the original language would have a fiscal impact, which is yet to be determined, whereas the new language would not have an impact on the ORC nor the ADWs.

**PUBLIC COMMENT:**

None.

**CLOSING REMARKS**

None.

**CONFIRMATION OF NEXT COMMISSION MEETING:**

The next Fiscal and Advisory Committee meeting is scheduled for Monday, October 23, 2023, at 9:00 a.m. via ZOOM.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned at 9:35 A.M.