

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 6th Meeting of the 2021 Interim

November 18, 2021

Call to Order and Roll Call

The 6th meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Thursday, November 18, 2021, at 11:00 AM, in Room 131 of the Capitol Annex. Representative Adam Koenig, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator John Schickel, Co-Chair; Representative Adam Koenig, Co-Chair; Senators Julie Raque Adams, Jimmy Higdon, Michael J. Nemes, Damon Thayer, and Reginald Thomas; Representatives Kim Banta, Kevin D. Bratcher, Tom Burch, Patrick Flannery, Al Gentry, Thomas Huff, Matthew Koch, Chad McCoy, Reginald Meeks, Michael Meredith, Jerry T. Miller, Kimberly Poore Moser, Ruth Ann Palumbo, Phillip Pratt, Sal Santoro, and Killian Timoney.

Guests: Mary Harville, President & CEO, Maggie Garrison, Vice President & Corporate Controller, Kentucky Lottery Corporation; John Goldberg, Outside Counsel for the Kentucky Lottery Corporation, Goldberg Simpson; Madge E. Vail, Vice President of Compliance and Regulatory Affairs; Lancaster Bingo Company; John Ward, President, Kentucky Sherriff Association; Gene Cole, Kentucky League on Alcohol and Gambling Problems; Erin Klarer, Kentucky Higher Education Assistance Authority; Kama Reed, B.J. Novelty; Mike Barry and Paul Goldean, Pace-O-Matic; Bob Heleringer, Wildcat Games; Representative Lisa Willner; Dr. Sheila Schuster, Executive Director, Advocacy Action Network; Dr. Eric Russ, Executive Director, Kentucky Psychological Association; Carolyn Basford, President, Kentucky Board of Durable Medical Equipment Suppliers; and Jennifer Doering, General Manager, Chaz Seligman Distributing.

LRC Staff: Tom Hewlett, Bryce Amburgey, Jasmine Williams, Melissa McQueen, and Lisa W. Moore

Approval of Minutes from October 21, 2021, Meeting

Chairman Schickel motioned to approve the meeting minutes from October 21, 2021, meeting and Representative Koch seconded the motion. Motion carried.

Kentucky Lottery Corporation

The President/CEO of the Kentucky Lottery Commission said lottery-funded scholarships and grant programs include: Kentucky Education Excellence Scholarship (KEES), College Access Program (CAP), Kentucky Tuition Grants (KTG), Work-Ready Kentucky Scholarship, Dual Credit Scholarship, and the National Guard Tuition Award. More than \$4 billion in proceeds have provided over 2.43 million scholarships and grants since 1999. In 2019, over 138,660 Kentucky students received a grant or scholarship paid for by Kentucky Lottery proceeds, while 98 percent of student financial aid awarded by the Commonwealth comes straight from the sale of Kentucky Lottery tickets.

The president/CEO said unregulated gaming machines, also referred to as “skill” or “gray” machines, are harming lottery proceeds. The gray machines are placed in the same locations as the lottery sales, such as convenient stores and gas stations. They are unregulated and once the machines are installed, stores can see sales of \$20,000 annually. Some machines have Fraternal Order of Police (FOP) stickers and the association does get a cut of the profit from those machines. Retailers can earn 40 percent of profits from gray machines, while only getting 6.25 percent of lottery profits.

People remain confused about the legality of the unregulated gaming machines. If the machines are deemed illegal, it can have consequences for the store owner. A gambling conviction can result in all lottery sales being removed. The president/CEO said lottery sales are down three percent in places where these machines are located, and up four percent in places that do not have the machines. Neighboring states vary on handling the gray machines. Some states do not want them at all; while Georgia is working on regulating and taxing them.

The President of the Sheriff’s Association, said the association is requesting clarity on the law. Responding to Senator Thomas, he said he is not aware of minors playing the gray machines, or if an elevated number of disorderly conduct and assault charges have been reported in locations with the machines.

The outside counsel for the Lottery Corporation said he has provided counsel to the Lottery for over 20 years, and has never seen anything so blatantly illegal as these machines. He said the gaming machines are not games of chance, and are hurting lottery sales and subsequently Kentucky students by reducing scholarship dollars. He has sent a request for an opinion to the Kentucky Attorney General, and is waiting for a response.

The Vice President of Compliance and Regulatory Affairs, Lancaster Bingo Company, said the unregulated gaming machines hurt charitable gaming. The gray machines are not required to be audited or submit reporting. She has to hire volunteers to regulate payment, but is curious who is regulating payment for this industry.

Responding to a question from Senator Higdon, the Lottery’s counsel said local sheriffs, police, and the Kentucky State Police are responsible for enforcing violations of

Kentucky law. The law regarding the gray machines is currently awaiting an Attorney General Opinion in Kentucky. If the ruling outlaws the machines, local law enforcement will be the enforcers. Senator Higdon said this is a serious issue, and it is deceptive for the unregulated gaming machines companies to say they are licensed in Kentucky.

Chairman Schickel said he is an active member of the FOP and suggested the association needs to pull away from partnering with the unregulated gaming machines. He said the machines are illegal, and the FOP should not be associated with them.

Senator Thayer said the machines are illegal, and are not games of skills. He wants legislation introduced in the 2022 Regular Session of the General Assembly to clearly state this.

Representative Timoney thanked the Kentucky Lottery Corporation for providing KEES money to students to help fund their higher education.

Responding to Representative Flannery, the Lottery counsel said there were no current lawsuits against the gray machine companies.

A representative for Wildcat Games, testified in support of the gray machines. He said the gray machines comply with the law and are games that require skill, which is why there have been no lawsuits to date. He asked the committee not to rush to judgment and create a law until the product is completely researched and explained.

The President/CEO of Pace-O-Matic said his company specializes in games of skill. Terminals are placed for free to operators across the state, and the machines provide vital supplemental income to small businesses. Kama Reed, with B.J. Novelty, has the machines installed in her business in Covington, Kentucky, and said it is a big attraction for her customers. She also noted 90 percent of revenue generated in-state is spent within the state.

Responding to Representative Miller regarding taxes, the Pace-O-Matic CEO said his company pays no taxes to the state except for income tax. In Virginia gray machines are regulated, and over \$130 million was paid in taxes. His goal is to become regulated and pay taxes in Kentucky.

Responding to Chairman Koenig, the Pace-O-Matic CEO said he wanted to try the business county by county before asking the legislature for regulation. He is asking the legislature now to be regulated, but did not before installing the machines in the stores.

Electrical Inspections of Transportation Cabinet Projects

Representative Sal Santoro would like for electrical contractors to have the option of local electrical inspectors or Transportation Cabinet inspectors to inspect electrical work which is not related to buildings for human occupancy performed beyond the service

disconnect by or on behalf of the Kentucky Transportation Cabinet by prequalified electrical contractors within the public right of way. There were no questions from committee members.

Licensure of Psychologists

Representative Moser said this legislation addresses the shortage of substance abuse health professionals. Representative Willner and the Executive Director of the Kentucky Psychological Association and Foundation, explained the requirements in the bill. The legislation will make it easier for students with the necessary course hours, but who do not have specific academic degrees, to move to the state and get certification, thus increasing the number of mental health professionals in Kentucky. The changes will be similar to the training of psychologists in Tennessee.

Responding to a question from Chairman Schickel regarding the number of hours of training on cultural issues, Representative Willner said this adds diversity training, but does not increase the number of training hours.

Provision of Sterile Water

The President of the Kentucky Board of Durable Medical Equipment Suppliers asked for changes to allow her licensees to purchase and utilize sterile water. Infections are more common when boiling and handling the water for people being placed on a ventilator. Prepackaged sterile water would be much safer. Chairman Koenig said the change would be better handled as an administrative regulation, but the Licensing, Occupations, & Administrative Regulations Committee will be ready for legislation if needed.

Malt Beverage Educational Fund

The General Manager of the Chaz Seligman Distributing Company said the Malt Beverage Educational Corporation (MBEC) was established with two major purposes in mind; providing programs aimed at prevention and elimination of underage drinking, and providing education about the dangers associated with underage drinking. For every dollar MBEC raises privately, the state matches with an annual contribution from the tax collected on the sale of malt beverages.

The combination and cooperation of this private-public partnership has enabled many organizations to promote and produce programs aimed at preventing and eliminating underage drinking in Kentucky, and has helped thousands of youth to enjoy meaningful times in their lives in safe and happy environments through Project Prom and Project Graduation. Since MBEC's inception (over 23 years ago) it has donated nearly \$2 million to high schools to help fund Project Prom and Project Graduation programs alone. MBEC has also funded nearly \$100,000 in grants, and over \$110,000 in "mentoring" programs.

The Kentucky Beer Wholesalers Association is asking the legislature to give the MBEC Board more flexibility in how to utilize funds. The new proposal would allow some

of the funds to be spent on scholarships for college and technical school students who have demonstrated an interest in working for a licensed distributor. These young people would be allowed to receive a stipend to further their education, while at the same time, getting an opportunity to expand their interest in “real time” and “real job” opportunities that have the potential of folding into career paths.

The scholarship dollars could be aimed at creating diversity in the business community and for students who are interested in career opportunities that have been previously prohibited by archaic and out-of-date laws. At this time, no one under 21 can be employed to work for a licensed distributor or in the warehouse. By law, some people are prohibited from seeking top-end jobs and career opportunities that exist in the marketplace. If the artificial barriers are eliminated, it would not only allow for greater opportunities for deserving students, but also help some of our business leaders to address severe worker shortages in critical areas of employment.

Finally, it would allow MBEC to expand its’ mission and assistance by providing education. The program could provide educational information to high school students on the dangers of underage drinking, but it would provide continuing education opportunities after high school into college or technical school, and provide a career path toward the future.

With no further business before the committee, the meeting adjourned at 12:20 p.m.