

NEVADA TAX COMMISSION
MEETING MINUTES

July 31, 2020
2:00 p.m.

Chairman DeVold called the Meeting to order at 2:10 p.m.

Director Young Administered an oath to all meeting participants.

Commissioner Kelesis disclosed that he has been listed as a witness in the pending litigation. He discussed this matter with the Commission's counsel, Rosalie Bordelove. Commissioner Kelesis stated this does not impair him in any way to be impartial in the matter and he plans to participate.

I. Public Comment.

Director Young read written public comments (attached hereto) from the following people into the record:

Tyler Klimas, Executive Director, Cannabis Compliance Board

John A. Hunt, Clark Hill PLC

THC Nevada LLC and Herbal Choice, Inc., via counsel - Amy L. Sugden and Sigal Chattah

Ross Miller, Clark Hill PLLC, on behalf of seven cannabis companies.

Rob Lauer, 360 News Las Vegas

Jeff Church, www.RenoTaxRevolt.com

Annette Coats, Reno property owner

David Goldwater, Partner, Inyo Fine Cannabis Dispensary

Public Comment received by telephone:

Chairman DeVold asked that those providing public comment state and spell their name for the record and disclose if they are party to the proposed settlement.

Brandon Wiegand, Regional General Manager of Nevada Organic Remedies (NOR). Mr. Wiegand stated that NOR is one of the settling parties in the case. NOR has a history of being one of the leading dispensary operators in the state of Nevada. In 2018 NOR was ranked as either first or second in all jurisdictions, and as a result NOR was awarded seven licenses. NOR believes that the Department of Taxation did its job in accepting, scoring and ranking of the applications. When the litigation began, NOR was the first company to be on the side of the State to support the licensing process. NOR has continued to defend the Department of Taxation's process throughout the lawsuits, even when the DOT made the question of ownership of various applicants, which NOR disagreed with. We have identified our company's ownership to the satisfaction of the State so they can perform their many duties. NOR believes the rankings were proper and all seven licenses that were awarded to NOR were properly awarded. We are willing to reach a compromise to again begin doing business. This will allow NOR to employ Nevadans. We currently employ over 150 individuals. Upon opening additional stores, we expect to employ at least 120 more. The litigation has caused NOR to lay off the entire Reno team which was hired last year. NOR is looking forward to bringing many of the team members back as soon as possible. Additionally, opening stores creates many additional jobs, such as construction, business services and support. NOR has provided millions in revenue already and believes additional stores will bring in even more revenue. This will generate tax revenue for the State at the time when our State needs revenue most. NOR will continue to support the State's efforts to regulate the smart bid and ensure that the State remains strong. Mr. Wiegand asked that the Commission approve the Settlement Agreement.

Dr. Nick Spirtos stated that he is not currently a party to the lawsuits but has been in the past. Dr. Spirtos stated it seems almost virtually impossible that there be any settlement to the lawsuits without reference to the law that was in place at the time the applications were filed. Exclusions and changes in the law unilaterally made by Mr. Pupo and others was unacceptable if not absolutely illegal. At the first meeting discussing this issue, Chairman DeVolld said that he would put this issue on an agenda to be thoroughly discussed, which did not occur. When questioned about this at further meetings, the Chairman stated this was in the process of being litigated and that this Commission would not be taking up this issue due to the litigation. Dr. Spirtos asked the Chairman to state why at this time it is proper for the Commission to take up this matter at such short notice, when there have been months during which time period you have refused to do your job and review this.

Leighton Kohler, Board Member and Corporate Secretary for settling party, MM Development Company Inc. dba Planet 13. Mr. Kohler stated the company has worked diligently toward a settlement with the state of Nevada and is fully in support of the settlement. The settlement will allow licensed operators to open under new licenses. The immediate affects will be access to products that many in Nevada use for essential medical purposes, more jobs for people that will work at the dispensaries, and an increased tax base when Nevada is looking for revenue and solutions for the economic downturn due to the COVID-19 pandemic. We have come together to form this solution and we feel this settlement is in the best interest of Nevada. Thank you.

Todd Bice, legal counsel for Integral Associates dba Essence Dispensaries, who are not parties to the Settlement Agreement, but one of the winning applicants from the 2018 round, and a strident defender of the State, the Department and the processes implanted in selecting applicants in 2018. The Settlement Agreement confirms that the litigation constitutes legal grounds for the granting of extensions to finalize the provisional licenses that were awarded in December of 2018. In Section 18 of the Agreement, you and the Cannabis Compliance Board (CCB) are granting extensions. Mr. Bice reiterated that the successful 2018 applicants are entitled to the same equal treatment under the law and entitled to the same timeframe for inspections and approvals. Mr. Bice is confident that neither this Commission nor the CCB is suggesting otherwise. Mr. Bice thanked the Attorney General's office and the Chairman.

Christopher Rose, Attorney for Wellness Connection of Nevada (Wellness) dba Cultivate, a non-settling party/defendant to the pending litigation. Mr. Rose stated Wellness is concerned, as a licensee, as to the treatment of all the applicants and licensees. As stated in a prior comment, all applicants in this process should be treated equally. As a licensee, we hope that the regulatory authority would not show favoritism, as this is what this case is about. For the last year and a half, the plaintiffs have litigated the case claiming that the DOT has engaged in favoritism. Wellness is concerned that in a case where allegations of favoritism have dominated the day, that it is now being resolved through an agreement that requires favoritism by the regulatory authority in the form of expedited final inspections, expedited ownership transfers, location changes, awards of licenses, and a 14 month extension for final inspections. Mr. Rose stated he is voicing concerns with an agreement that favors certain applicants/licensees to the exclusion of others. The regulatory authority should treat all licensees and applicants equally.

Jared Kahn, representing Helping Hands Wellness Center (Helping Hands), a settling defendant intervenor. Mr. Kahn stated that Helping Hands won three dispensary licenses in December of 2018. The goal of Helping Hands is to donate 70 percent of profits to the affiliated non-profit of Dr. Florence Jameson's Volunteers in Medicine Clinic, which provides low income residents access to healthcare in our community and to donate to other non-profits in the Vegas community. After a year and a half of litigation and delays in providing jobs to Las Vegas residents, with this settlement, Helping Hands is pleased that it can now open its dispensary locations, support the tax revenues generated from cannabis sales, and begin fulfilling its mission to provide financial support to Dr.

Jameson's Volunteers in Medicine Clinic. Helping Hands is appreciative of the Board's approval today and in assisting in resolving this challenging case. Thank you.

Matt McClure, resident of Las Vegas, and currently working in the cannabis industry in Nevada. Mr. McClure stated he blessed to have worked in the cannabis industry in other states as well. *Inaudible*.

II. CONSENT CALENDAR:

A. Consideration for Approval of the Recommended Settlement Agreement:

1. In re Department of Taxation Litigation, Case No. A-19-787004-B, pending in the Eighth Judicial District Court (consolidated with Case Nos.: A-18-785818-W; A-18-786357-W; A-19-786962-B; A-19-787035-C; A-19-787540-W; A-19-787726-C; A-19-801416-B)

Commissioner Rigby motioned to pull Item II for further discussion. Commissioner Brown seconded the motion. All in favor. Motion carries.

Steve Shevorski, Chief Litigation Counsel for the Attorney General's Office, was present on behalf of the Nevada Department of Taxation. Chief Shevorski stated it is his privilege and honor to represent the Department of Taxation in the consolidated cases pending before the Honorable Judge Elizabeth Gonzalez, Department 11 in the Eighth Judicial District Court. Mr. Shevorski stated it has been his privilege and honor in life to serve Attorney General Aaron Ford and he is thankful for the opportunity to present partial settlements for the Commission's consideration today. Previously the Commission authorized Chairman DeVold to negotiate and reach a resolution to pending matters before Judge Gonzalez. The partial Settlement Agreement for your consideration today is a result of those efforts. This Agreement is a partial settlement and is not a full settlement. Not all plaintiffs in the action are part of this Agreement. The Agreement does resolve a great deal of the case; and attempts to eliminate a great deal of liability for the state of Nevada. The parties that are not settling are free to have their day in court before the Honorable Judge Gonzalez. This Agreement is in some ways contingent upon a filing of a motion before Judge Gonzalez to remove certain organizations from the preliminary injunction that Judge Gonzalez ordered. She could disagree and the Agreement would not function if the motion is not granted. Paragraph 13 is not part of the Agreement and has been released on public record. The Department of Taxation and the Attorney General's Office have released Paragraph 13 and it is not part of the Agreement for consideration. If successful, it will bring in much needed tax revenue for the state of Nevada. On this basis, Mr. Shevorski is recommending the Agreement for approval.

Commissioner Bersi asked to define the tiers of plaintiffs.

Chief Shevorski answered it is a term of art in pending litigation. There were three tiers. The tiers were groups of entities that were successful applicants. Tier one entities are successful applicants but not part of the litigation; and did not have a question of disclosing owners, officers and board members. Tier two are entities that work for parties and successful conditional licensees; and the Department was able to eliminate the question of whether or not they disclosed each respective owner, officer and board member. Tier three were companies that were parties to the litigation and intervened. The Department took the position that it could not eliminate a question of whether or not, they had disclosed each owner, officer and board member.

Commissioner Wren stated the reason we are here today is because the Commission mandated a stipulation to give the Chairman the authority to negotiate with parties. The Settlement is something that we asked for and is mandated by the court.

Steve Shevorski answered, that is correct, but it is not court ordered.

Commissioner Wren asked if this will go before the CCB for their vote.

Steve Shevorski stated that this would go to a public meeting before the CCB because that is how the transfers of interest before the parties would happen.

Chairman DeVold asked if Judge Gonzalez is aware of this entire agreement.

Steve Shevorski answered, he believes that she is aware because there was a temporary restraining order injunction where non-settling plaintiffs sought to have an injunction to prevent the Tax Commission from voting on this Agreement and they believed that this Agreement was improper. There was argument at the hearing. The injunction was denied this morning.

Commissioner Kelesis asked if there is any legal authority that the Department of Taxation can bind the CCB.

Steve Shevorski answered, without disclosing attorney/client privileged communications, he is not aware of any.

Commissioner Kelesis mentioned in Paragraph 22 there are representations and warranties. On June 30, 2020, the Department of Taxation was removed by statute from enforcing and administering licenses for marijuana.

Steve Shevorski stated the CCB would be doing some things, but with respect to the pending litigation, that would not be the CCB. The CCB agrees with the Agreement. The CCB binds itself. This is the importance of Director Klimas' letter and what is going to occur by public meeting in the future.

Commissioner Wren stated that he understands the concern and asked to remove Paragraph 22. It seems as though that would eliminate the problem.

Commissioner Kelesis stated he is not willing to agree with this and mentioned he wants to see the CCB have a public hearing and approve these terms. Commissioner Kelesis stated the CCB has jurisdiction over all of this and he firmly believes they must approve this first.

Commissioner Wren suggested if the recommendation is to approve, we include that the CCB approves it as well.

Commissioner Rigby referred to a section of the Agreement regarding to an option period following the execution of the Agreement. It states they would pay \$250k, or any other price, as the parties agree. She asked if there is a way to tighten up this language, or do you believe this language will not be an issue?

Steve Shevorski stated he believes the language is enforceable and not too vague. It is in there as an example and negotiated by the parties.

Commissioner Lipman stated she is comfortable that the CCB is in approval, however the letter was drafted prior to the elimination of paragraph 13. Commissioner Lipman asked about the authority for issuing conditional licenses through this Agreement.

Steve Shevorski stated it was a litigation position that was taken in response to the preliminary injunction motion. It was not discussed with Director Klimas beforehand. This does not affect Agreement. With respect to the conditional licenses, there is no cap for conditional licensure.

Commissioner Brown asked Mr. Shevorski to spend a few minutes explaining paragraphs 16, 18 and 35. What is the State's position on expediting inspections, on the extension of the license period and the distance requirement?

Steve Shevorski stated these are process of negotiations. The CCB is working diligently. Stores are ready to be open and to employ Nevada. This can be accomplished by the CCB very easily. The distance requirement is a term between the settling parties and the wholesaling plaintiffs. This is not pertaining to the regulatory authority.

Commissioner Kelesis asked Commissioner Lipman about the letter being convincing; and also asked that she explain if the CCB had meetings and if the public was able to make comment. We are taking the public comment and we do not have the legal authority. The CCB has the authority. We know they did not review the whole Agreement. How do we know the impact of the public comment before the CCB?

Chairman DeVolld stated the Attorney General has worked in conjunction with the CCB and they agree to be bound. It was not in a public meeting and if they had a problem, they would not have written a letter. The Chairman agreed that there needs to be a public hearing.

Commissioner Lipman stated she appreciates all that the Chairman has done for the state of Nevada. Commissioner Lipman read a portion of Tyler Klimas' letter. "The Settlement Agreement has been reviewed by the CCB, including those that bind the CCB, and are committed to executing those obligations stated therein...". This is a clear and affirmative commitment in writing from the Executive Director and he copied the Honorable Chief Justice Michael Douglas of the Nevada Supreme Court.

Commissioner Rigby stated this is a complex and complicated situation. We delegated the Chairman to negotiate an agreement and to bring it to us. As of July, the CCB began to take on the responsibility of marijuana compliance. The CCB was hoping that the Department of Taxation would resolve, to the extent possible, so they could start with a clean slate. If it resolves 80% of the matters and puts them to bed, this is a huge step forward. The Department is the party, but the Commission is the head of the Department.

Commissioner Rigby moved to approve the proposed Settlement Agreement. Commissioner Lipman seconded the motion.

Commissioner Brown suggested adding the condition for the CCB to approve.

Chief Attorney General Bordelove stated the motion could be amended

Commissioner Rigby withdrew her previous motion.

Commissioner Rigby moved to approve the Settlement Agreement, with the removal of Paragraph 13, and contingent upon approval by the Cannabis Compliance Board (CCB).

Commissioner Lipman seconded the motion, as revised. All in favor. Motion carries.

III. Next Meeting Date: August 17, 2020

IV. Public Comment.

David Goldwater stated he is not a settling party. All that will remain is the public record. Despite Chairman DeVold's representations, not all parties were consulted or worked with. We were not contacted or offered an agreement. We did not hear in the discussion as to what the criteria was. What compelled the Commission to settle with some parties and not with others? What was the urgency in this matter on behalf of the State, other than a litigation strategy? Thank you.

Dr. Nick Spirtos stated it is quite surprising, after a year and a half, that the Commission has had the ability to oversee the applications and compliance with the law of the applications; and you relieved yourself of responsibility. Now at the last minute, you take it upon yourself? Dr. Spirtos finds it strangely impossible to believe there is an urgency at this point.

V. Meeting adjourned at 3:51 p.m.