

AGENDA

KANSAS RACING AND GAMING COMMISSION  
2:00 p.m., Tuesday, September 23, 2008

CONFERENCE CALL  
(SEE INSTRUCTIONS BELOW)  
Dwight D. Eisenhower State Office Building  
700 SW Harrison  
Topeka, Kansas

A. CALL TO ORDER

B. APPROVAL OF THE AGENDA

C. COMMISSION ITEMS

1. Non-approval of the Lottery Gaming Facility Review Board's September 5, 2008, recommendation of Penn National Gaming

*Commission Action:*                      *Commission review and discussion*  
*Staff Presentation:*                      Patrick Martin, Assistant Attorney General  
*Staff Recommendation:*                  Staff recommends approval of the motion  
a. [Staff Memo](#)

D. ADJOURNMENT

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*CONFERENCE CALL INSTRUCTIONS*

Dial the Phone Number: (877) 278-8686

Enter the PIN Number when prompted: 813463

**NOTE:** For members of the general public, please mute your phone to reduce noise on the line and to allow for an orderly meeting. If you are unsure of how to mute you personal phone, you may use one the functions below to mute, un-mute, or adjust the volume.

- \*7 – Mute your phone
- \*9 – Un-mute your phone
- \*2 – Increase volume
- \*8 – Decrease volume

# *Kansas Racing and Gaming Commission*

## STAFF AGENDA MEMORANDUM

**DATE OF MEETING:** September 23, 2008

**AGENDA ITEM:** **Non-approval of the Lottery Gaming Facility Review Board's recommendation of Penn National Gaming.**

**PRESENTER:** Patrick D. Martin, Assistant Attorney General

**ISSUE SUMMARY:** On August 22, 2008, the Lottery Gaming Facility Review Board selected Penn National Gaming as the manager of a gaming facility in the southeast gaming zone. The Review Board then forwarded that recommendation on to the KRGC. Since that recommendation, Penn National Gaming has voluntarily withdrawn itself from consideration as a lottery gaming facility manager. Without another applicant in that gaming zone, the state would like to restart the selection process.

To aid in restarting that process, the KRGC should formally “not approve” the Review Board’s recommendation. That action is called for under the express language of the Kansas Expanded Lottery Act. Specifically, KELA provides that the process for selection of a lottery gaming facility manager “shall begin again” if the KRGC “does not approve the recommendation of the lottery gaming facility review board.” K.S.A. 74- 8736(e). In full, that provision of KELA states:

Upon completion of such investigations and approval of the background of the prospective lottery gaming facility manager . . . but not more than 10 days after receiving the recommendation of the lottery gaming facility review board, the Kansas racing and gaming commission shall vote to approve in whole or reject in whole the recommendation of the lottery gaming facility review board. If the Kansas racing and gaming commission does not approve the background of such prospective lottery gaming facility manager, directors, officers and other persons having an interest in such prospective manager *or does not approve the recommendation of the lottery gaming facility review board, the Kansas racing and gaming commission shall notify the executive director of the lottery and the process for selection of a lottery gaming facility manager shall begin again* in the manner provided in sections 3 and 4, and amendments thereto.

*Id.* (emphasis added).

Both the KRGC counsel and the Lottery are in agreement that, under KELA’s language, the KRGC should formally “not approve the recommendation of the lottery gaming facility review board” to begin the selection process in the southeast zone again.

*Kansas Racing and Gaming Commission*

**STAFF AGENDA MEMORANDUM**

**COMMISSION ACTION REQUIRED/REQUESTED**

*Staff suggests the following motion:*

“In light of Penn National Gaming’s voluntary withdrawal from the southeast gaming zone, the KRGC does not approve the August 22, 2008, recommendation of the Lottery Gaming Facility Review Board. The KRGC makes this final decision so that the Kansas Lottery may restart the application process in the southeast zone. To be clear, this is not a decision on Penn National Gaming’s background.”

**STAFF RECOMMENDATIONS:** Staff recommends adopting the motion not approving the Review Board’s recommendation for the southeast gaming zone.