

Subject Disciplinary Review Board Hearing Policy		Number 5-44	Draft # 2015-001
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Executive Director Authorization  Don Brownlee, Executive Director		Commission Authorization Signature on file Dennis McKinney, Interim Chair	
	Date: 10/16/2015	Date: 10/16/2015	Date:

A. Purpose/Background

The Kansas Expanded Lottery Act (KELA) requires the Kansas Racing and Gaming Commission (KRGC) to oversee all lottery gaming facility operations including the oversight of security of facilities; the credentialing of employees, contractors, and agents of lottery gaming facility managers and ancillary lottery gaming facilities; the enforcement of all state laws; and the maintenance of the integrity of lottery gaming facilities. Pursuant to this mandate, the KRGC promulgated regulations creating a disciplinary process to address violations of statutes, regulations, and internal controls by Licensees and Certificate Holders.

The KRGC regulations establish minimum procedural requirements for the disciplinary process to ensure the protection of Licensees' and Certificate Holders' due process rights. As part of the disciplinary process, the KRGC regulations establish a Disciplinary Review Board (DRB) which has the authority to review alleged violations and issue summary orders through the agency's enforcement attorney, conduct hearings, and impose sanctions when appropriate. If a Respondent challenges the DRB's findings following a DRB hearing, the Respondent may appeal the DRB's findings to the Commission. The Commission will then conduct an appeal hearing to determine whether the DRB's findings should be upheld, overturned, or modified.

An initial hearing may also be heard by the full Commission, a panel comprised of two or more commissioners, or an individual Presiding Officer appointed by the Commission chair. To promote efficiency, the Commission will conduct the initial disciplinary hearing whenever possible. The DRB will conduct initial hearings in the absence of a quorum of the Commission, as requested by the Commission chair, or when matters require additional fact finding or are more appropriately addressed first by the DRB. This policy outlines in further detail this disciplinary process to ensure it is conducted consistently, efficiently, and fairly.

Under K.S.A. 74-8751, the KRGC "through rules and regulations, shall establish: . . .

(c) provisions for revocation of a certification . . . upon a finding that the certificate holder, an officer or director thereof or a person directly or indirectly owning a 0.5% or more interest therein: (1) Has knowingly provided false or misleading material information to the Kansas lottery or its employees; or (2) has been convicted of a felony, gambling related offense or any crime of moral turpitude; and

(d) provisions for suspension, revocation or nonrenewal of a certification . . . upon a finding that the certificate holder, an officer or director thereof or a person directly or indirectly owning a 0.5% or more interest therein: . . . (4) has violated any provision of the Kansas expanded lottery act or any rule and regulation adopted hereunder."

Under K.S.A. 74-8772, the KRGC "shall adopt such rules and regulations as the commission deems necessary to carry out the duties and functions of the commission pursuant to the Kansas Expanded

Lottery Act. Such rules and regulations shall include, but not be limited to, rules and regulations:

(a) Promoting the integrity of the gaming and finances of lottery gaming facilities and racetrack gaming facilities and shall meet or exceed industry standards for monitoring and controlling the gaming and finances of lottery gaming facility operations and racetrack gaming facility operations and shall give the Kansas racing and gaming commission sufficient authority to monitor and control the gaming operation and to ensure its integrity and security; . . .

(e) provisions for oversight of all lottery gaming facility operations and racetrack gaming facility operations, including, but not limited to, oversight of internal controls; oversight of security of facilities; performance of background investigations, determination of qualifications and credentialing of employees, contractors and agents of lottery gaming facility managers, ancillary lottery gaming facility operations and racetrack gaming facilities; auditing of lottery gaming facility revenues and net electronic gaming machine income of racetrack gaming facilities; enforcement of all state laws; and maintenance of the integrity of lottery gaming facility and racetrack gaming facility operations.

Disciplinary hearings conducted under the Kansas Expanded Lottery Act are not subject to the requirements of the Kansas Administrative Procedures Act. Disciplinary hearings conducted under the Kansas Parimutuel Racing Act are subject to the requirements of the Kansas Administrative Procedures Act and will be conducted in accordance with the Kansas Administrative Procedures Act.

Under KRGC regulation K.A.R. 112-114-3, “(a) [i]f disposition of [a violation] allegation raised in a report could result in suspension or revocation, the respondent shall be provided by the Commission with reasonable notice of the alleged violation and hearing.

(b) The notice of alleged violation and hearing shall include the following information:

- (1) the time and location of the hearing;
- (2) the identity of the hearing body;
- (3) the case number and the name of the proceeding;
- (4) a statement of the legal authority and a general description of the allegation, including the time of the occurrence;
- (5) a statement that a respondent who fails to attend the hearing may be subject to the entry of an order that is justified by the evidence presented at the hearing; and
- (6) a statement that a respondent has the right to appear at the hearing with counsel, the right to produce any evidence and witness on the respondent’s behalf, the right to cross-examine any witness who may testify against the respondent, and the right to examine any evidence that may be produced against the respondent.”

Under KRGC regulation K.A.R. 112-114-9, “(a) The presiding officer at each hearing shall regulate the course of the proceedings. (b) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.”

B. Definitions

1. *Commission*: The appointed Commissioners of the Kansas Racing and Gaming Commission. (KRGC).
2. *Certificate Holder*: An entity, such as a facility manager or gaming supplier, that has been issued a certificate by the KRGC.
3. *Disciplinary Review Board (DRB)*: A board established by the executive director who reviews licensee or certificate holder conduct to ensure compliance by applicants, licensees, and certificate holders with these regulations, the act, and other laws.

4. *Executive Director*: The executive director of the Kansas Racing and Gaming Commission.
5. *Full Evidentiary Hearing*: A hearing which includes the presentation of live witness testimony, cross examination and rebuttal, in addition to documents and surveillance video, in accordance with K.A.R. 112-114-9(b).
6. *Incident Report*: Reports of alleged statutory, regulatory, or internal control violations which are created by KRGC agents, KRGC auditors, and KRGC electronic security staff.
7. *Licensee*: A person who has been issued a gaming license by the KRGC.
8. *Order*: A brief statement of the findings of the Commission and any penalty prescribed. Orders are written and issued within 30 days after a hearing.
9. *Presiding Officer*: The hearing officer who conducts prehearing conferences, hearings, and issues legal rulings on evidentiary and procedural matters. The presiding officer can be the Executive Director, chairperson of the Commission, or a person designated by the Commission.
10. *Respondent*: The Licensee or Certificate Holder who is alleged to have committed the violation.
11. *Sanction*: The penalty ordered, which may include monetary fines, license/certificate suspensions, and license/certificate revocations.
12. *Summary Order*: The initial violation finding issued by the Disciplinary Review Board.

C. Policy – Disciplinary Process for Licensees and Certificate Holders

1. The Disciplinary Review Board receives Incident Reports from agents, auditors, and electronic security and meets to discuss whether a regulatory, statutory or internal control violation has occurred and, if so, what sanction to issue.
2. Once the DRB determines a statutory, regulatory, or internal control violation has occurred and warrants a sanction, the DRB will direct the agency's enforcement attorney to issue a warning letter, letter of reprimand, or Summary Order to the Respondent.
3. If the DRB issues a Summary Order, the Respondent has the right to request a hearing before the Commission. If the Respondent requests a hearing, the hearing will be held no less than 4 weeks from the date of the Summary Order at a Commission meeting or on another date determined by the Commission.
4. At the hearing, the Respondent and the KRGC, through its enforcement attorney, will argue and present evidence to the Commission. Neither party will be allowed to present live witness testimony.
5. Following arguments, the Commission will deliberate, and if the Commission determines no further evidence is necessary for a finding, the Commission will issue an Order. If the Commission determines further evidence is necessary for a finding, the case will be continued to allow for a Full Evidentiary Hearing. The Commission can uphold, overturn, or amend the DRB's Summary Order.
6. If the Commission issues an Order without a Full Evidentiary Hearing, the Respondent may request a Full Evidentiary Hearing. If the Respondent timely requests a Full Evidentiary Hearing, the Commission will schedule and conduct such hearing with live witness testimony in accordance with K.A.R. 112-114-9(b). After the Full Evidentiary Hearing, the Commission will issue a final Order. This Order constitutes final agency action and is subject to appeal under the Kansas Judicial Review Act.
7. If the Respondent does not timely request a Full Evidentiary Hearing, the Commission's Order will become final subject to appeal under the Kansas Judicial Review Act.

D. Citations/References

K.S.A. 74-8751(c)-(d)



K.S.A. 74-8772(a), (e)
K.A.R. 112-114-3
K.A.R. 112-114-9(a)-(b);

E. Attachments

K.S.A. 74-8751(c)-(d)
K.S.A. 74-8772(a), (e)
K.A.R. 112-114-3
K.A.R. 112-114-9(a)-(b);

F. Action

This policy supersedes all other existing Racing and Gaming Commission policies on this topic and shall be implemented upon approval by the Commission.

Article 87. – STATE LOTTERY

74-8751. Rules and regulations; certification of certain persons connected with lottery gaming and racetrack gaming. The Kansas racing and gaming commission, through rules and regulations, shall establish:

(a) A certification requirement, and enforcement procedure, for officers, directors, key employees and persons directly or indirectly owning a 0.5% or more interest in a lottery gaming facility manager or racetrack gaming facility manager. Such certification requirement shall include compliance with such security, fitness and background investigations and standards as the executive director of the Kansas racing and gaming commission deems necessary to determine whether such person's reputation, habits or associations pose a threat to the public interest of the state or to the reputation of or effective regulation and control of the lottery gaming facility or racetrack gaming facility. Any person convicted of any felony, a crime involving gambling or a crime of moral turpitude prior to applying for a certificate hereunder or at any time thereafter shall be deemed unfit. The Kansas racing and gaming commission shall conduct the security, fitness and background checks required pursuant to this subsection.

Certification pursuant to this subsection shall not be assignable or transferable;

(b) a certification requirement, and enforcement procedure, for those persons, including electronic gaming machine manufacturers, technology providers and computer system providers, who propose to contract with a lottery gaming facility manager, a racetrack gaming facility manager or the state for the provision of goods or services related to a lottery gaming facility or racetrack gaming facility, including management services. Such certification requirements shall include compliance with such security, fitness and background investigations and standards of officers, directors, key gaming employees and persons directly or indirectly owning a 0.5% or more interest in such entity as the executive director of the Kansas racing and gaming commission deems necessary to determine whether such person's reputation, habits and associations pose a threat to the public interest of the state or to the reputation of or effective regulation and control of the lottery gaming facility or racetrack gaming facility. Any person convicted of any felony, a crime involving gambling or a crime of moral turpitude prior to applying for a certificate hereunder or at any time thereafter shall be deemed unfit. If the executive director of the racing and gaming commission determines the certification standards of another state are comprehensive, thorough and provide similar adequate safeguards, the executive director may certify an applicant already certified in such state without the necessity of a full application and background check. The Kansas racing and gaming commission shall conduct the security, fitness and background checks required pursuant to this subsection. Certification pursuant to this subsection shall not be assignable or transferable;

(c) provisions for revocation of a certification required by subsection (a) or (b) upon a finding that the certificate holder, an officer or director thereof or a person directly or indirectly owning a 0.5% or more interest therein: (1) Has knowingly provided false or misleading material information to the Kansas lottery or its employees; or (2) has been convicted of a felony, gambling related offense or any crime of moral turpitude; and

(d) provisions for suspension, revocation or nonrenewal of a certification required by subsection (a) or (b) upon a finding that the certificate holder, an officer or director thereof or a person directly or indirectly owning a 0.5% or more interest therein: (1) Has failed to notify the Kansas lottery about a material change in ownership of the certificate holder, or any change in the directors or officers thereof; (2) is delinquent in remitting money owed to the Kansas lottery; (3) has violated any provision of any contract between the Kansas lottery and the certificate holder; or (4) has violated any provision of the Kansas expanded lottery act or any rule and regulation adopted hereunder.

History: L. 2007, ch. 110, § 20; Apr. 19.



Article 87. – STATE LOTTERY

74-8772. Kansas racing and gaming commission; rules and regulations. The Kansas racing and gaming commission shall adopt such rules and regulations as the commission deems necessary to carry out the duties and functions of the commission pursuant to the Kansas expanded lottery act. Such rules and regulations shall include, but not be limited to, rules and regulations:

(a) Promoting the integrity of the gaming and finances of lottery gaming facilities and racetrack gaming facilities and shall meet or exceed industry standards for monitoring and controlling the gaming and finances of lottery gaming facility operations and racetrack gaming facility operations and shall give the Kansas racing and gaming commission sufficient authority to monitor and control the gaming operation and to ensure its integrity and security;

(b) prescribing the on-site security arrangements for lottery gaming facilities and racetrack gaming facilities;

(c) requiring reporting of information about any lottery gaming facility manager or racetrack gaming facility manager, and its employees, vendors and finances, necessary or desirable to ensure the security of lottery gaming facility and racetrack gaming facility operations. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the Kansas open records act;

(d) requiring reporting and auditing of financial information of lottery gaming facility managers and racetrack gaming facility managers, including, but not limited to, the reporting of profits or losses incurred by lottery gaming facility managers and racetrack gaming facility managers and the reporting of such other information as the Kansas racing and gaming commission requires to determine compliance with the Kansas expanded lottery act and rules and regulations adopted hereunder. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the Kansas open records act; and

(e) provisions for oversight of all lottery gaming facility operations and racetrack gaming facility operations, including, but not limited to, oversight of internal controls; oversight of security of facilities; performance of background investigations, determination of qualifications and credentialing of employees, contractors and agents of lottery gaming facility managers, ancillary lottery gaming facility operations and racetrack gaming facilities; auditing of lottery gaming facility revenues and net electronic gaming machine income of racetrack gaming facilities; enforcement of all state laws; and maintenance of the integrity of lottery gaming facility and racetrack gaming facility operations.

History: L. 2007, ch. 110, § 41; Apr. 19.



Kansas Racing and Gaming Commission Regulation

112-114-3. Notice of alleged violation and hearing. (a) If disposition of the allegation raised in a report could result in suspension or revocation, the respondent shall be provided by the commission with reasonable notice of the alleged violation and hearing.

(b) The notice of alleged violation and hearing shall include the following information:

(1) The time and location of the hearing;

(2) the identity of the hearing body;

(3) the case number and the name of the proceeding;

(4) a statement of the legal authority and a general description of the allegation, including the time of occurrence;

(5) a statement that a respondent who fails to attend the hearing may be subject to the entry of an order that is justified by the evidence presented at the hearing; and

(6) a statement that a respondent has the right to appear at the hearing with counsel, the right to produce any evidence and witness on the respondent's behalf, the right to cross-examine any witness who may testify against the respondent, and the right to examine any evidence that may be produced against the respondent.

(Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)



Kansas Racing and Gaming Commission Regulation

112-114-9. Hearing procedure. (a) The presiding officer at each hearing shall regulate the course of the proceedings.

(b) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

(c) Upon the request of the respondent, the presiding officer may conduct all or part of the hearing by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(d) The presiding officer shall cause the hearing to be recorded at the commission's expense. The commission shall not be required to prepare a transcript at its expense. Subject to any reasonable conditions that the presiding officer may establish, any party may cause a person other than the commission to prepare a transcript of the proceedings.

(e) Each hearing shall be open to public observation, except for deliberations and parts that the presiding officer states are to be closed pursuant to a provision of law expressly authorizing closure.

(Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)