

Maryland Lottery and Gaming Control Commission

STAFF AGENDA MEMORANDUM

DATE OF MEETING: September 14, 2016

AGENDA ITEM: Contested Case Hearing Agreement with OAH

PRESENTER: Robert T. Fontaine

ISSUE SUMMARY:

State Government Article (“SG”), § 10-205, Annotated Code of Maryland permits agencies to delegate authority to conduct a contested case hearing under the Administrative Procedure Act to the Office of Administrative Hearings (“OAH”). The Commission and Director of the Agency are authorized to issue various lottery and gaming related licenses including the following: lottery retailer licenses (SG § 9-112); video lottery employee, manufacturer, contractor, and operator licenses (SG § 9-1A-01); amusement gaming licenses in Worcester County (§9-1B-01); electronic instant bingo licenses in Anne Arundel or Calvert County (Criminal Law Article (“Crim. Law”) §§ 12-301.1 and 12-308, Annotated Code of Maryland); and electronic gaming device operator, owner or manufacturer licenses (Crim. Law § 12-301.1). The Commission is authorized to conduct hearings under the Administrative Procedure Act to decide the appeal of a denial of a license, the suspension or revocation of a license, or any enforcement action taken against a licensee. The Chief Administrative Law Judge of the OAH may enter into an agreement with a public agency to provide an Administrative Law Judge (“ALJ”) to conduct contested case evidentiary hearings under the Administrative Procedure Act.

The Contested Case Hearing Agreement between the OAH and the Maryland State Lottery and Gaming Control Commission would permit the Commission to delegate certain contested cases to the OAH to conduct pre-hearing conferences, any required motions hearings, and a contested case evidentiary hearing. The ALJ assigned would issue a written final decision consisting of final findings of fact and/or conclusions of law.

COMMISSION ACTION REQUIRED/REQUESTED: Request approval of the Memorandum of Agreement and delegate to the Director in consultation with the Office of the Attorney General the authority to determine which matters should be delegated to OAH to be assigned to an ALJ.

STAFF RECOMMENDATIONS: Staff recommends approval.

**CONTESTED CASE HEARING AGREEMENT BETWEEN
THE OFFICE OF ADMINISTRATIVE HEARINGS AND
THE MARYLAND STATE LOTTERY AND GAMING CONTROL COMMISSION**

This Agreement is made between the Office of Administrative Hearings (“OAH”) and the Maryland State Lottery and Gaming Control Commission (“Commission”) (collectively, “Parties”);

WHEREAS, State Government Article (“SG”), § 10-205, Annotated Code of Maryland provides that agencies may delegate authority to conduct a contested case hearing under the Administrative Procedure Act to the OAH;

WHEREAS, SG § 9-104 establishes the Commission in the Maryland Lottery and Gaming Control Agency (“Agency”);

WHEREAS, the Commission and the Director of the Agency are authorized to issue licenses as follows:

Under SG § 9-112, the Director of the Agency is authorized to issue: (1) a lottery retailer license to a person or governmental unit; and (2) an instant ticket lottery machine license to a qualified veterans’ organization;

Under the Gaming Law (SG § 9-1A-01, *et seq.*), the Commission may issue a license to a video lottery employee, manufacturer, contractor, and operator;

Under SG § 9-1B-01, *et seq.*, and regulations promulgated thereunder, the Commission may issue an amusement gaming license to a qualifying family entertainment center in Worcester County;

Under Criminal Law Article (“Crim. Law”) §§ 12-301.1 and 12-308, and COMAR 36.07, the Commission may issue an electronic instant bingo license in Anne Arundel or Calvert County; and

Under Crim. Law § 12-301.1, the Commission may issue a license to an operator, owner, or manufacturer of an electronic gaming device;

WHEREAS, with respect to a license listed above, the Commission is authorized to conduct a hearing to decide the appeal of a denial of a license, the suspension or revocation of a license, or any enforcement action taken against a licensee;

WHEREAS, the Commission conducts such hearings in accordance with the Administrative Procedure Act (SG § 10-201, *et seq.*) and COMAR 36.01.02.06;

WHEREAS, SG § 9-1604(b)(1)(ii) authorizes the Chief Administrative Law Judge of the OAH to provide an Administrative Law Judge (“ALJ”) on a contractual basis to another governmental entity;

WHEREAS, SG § 9-1604(b)(1)(iv) further authorizes the Chief Administrative Law Judge of the OAH to enter into an agreement or contract with any public or private agency or educational institution and the Chief Administrative Law Judge has delegated that authority to the Director of Administration for the OAH; and

WHEREAS, the Commission desires that the OAH conduct certain contested case evidentiary hearings under the Administrative Procedure Act.

WHEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is expressly acknowledged, the parties agree as follows:

I. Duties and Responsibilities of the Parties

- a. The Commission may delegate to the OAH the authority to conduct a pre-hearing conference, any required motions hearings, and a contested case evidentiary hearing in certain cases, pursuant to SG § 10-205 and COMAR 36.01.02.06O.
- b. The OAH, through the Chief ALJ, shall assign an ALJ to conduct the hearings for the Commission.
- c. The ALJ shall issue to the Commission a written final decision, consisting of final findings of fact and/or conclusions of law, no later than 90 days from the conclusion of the evidentiary hearing, along with any written orders or rulings issued in relation to the pre-hearing conference and any motions hearings.
- d. The OAH shall schedule a court reporter “upon request” to be present to record the evidentiary hearing and any dispositive motions hearing.
- e. The OAH shall provide the record of the proceedings before the ALJ, including any evidence, to the Commission at the time the OAH issues the final decision. No transcript of any hearing will be provided at this time unless ordered and paid for by a person named or admitted to participate in the hearing as described in COMAR 36.01.02.06H(2) or the Commission.

II. Costs

- a. The OAH shall be compensated for the work performed at a rate of \$200 per hour.
- b. The OAH shall provide the Commission a written itemized bill that includes a detailed breakdown, in attorney billable-hour format, of the time expended by the ALJ in the case, including a description of the type of work performed by the ALJ.

- c. The OAH shall provide the Commission with an itemized bill within 14 days after the written final decision is issued.
- d. Upon receipt of the final decision and the itemized bill as described in Paragraph II.b, the Commission shall transfer the amount set forth in the itemized bill to the OAH through R*STARS within 30 days of receipt of the itemized bill.
- e. The person named or admitted to participate in the hearing shall pay transcription costs for any transcript ordered by that person in accordance with COMAR 36.01.02.06H(2).

III. Term of Agreement

This Agreement is effective when executed by each of the Parties and shall continue until such time as either party terminates the agreement with 60 days written notice.

IV. Exclusivity of Agreement

- a. This Agreement is the exclusive agreement of the Parties with respect to this subject matter and supersedes all prior agreements, representations, proposals, written and oral, relating to the subject matter.
- b. The Parties expressly acknowledge that this Agreement is the product of mutual negotiation and state that neither party shall be construed to be the primary drafter of the Agreement.

V. Amendment

This Agreement may be amended only by mutual agreement in writing executed by both Parties. Except for a specific provision which may be amended, this Agreement shall remain in full force and effect after such amendment subject to the same laws, obligations, conditions, rules, provisions and regulations as it was prior to any amendment.

VI. Revocation of Delegation

The Commission may revoke a delegation to the OAH in accordance with COMAR 36.01.02.06O.

VII. Governing Law

This Agreement shall be governed and construed in accordance with Maryland Law.

VIII. Representation of Authority

Each party to this Agreement represents and warrants to the other that it has the full right, power, and authority to execute this Agreement.

MEMORANDUM OF AGREEMENT
Office of Administrative Hearings and the
Maryland State Lottery and Gaming Control Commission

IX. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed.

_____, 2016

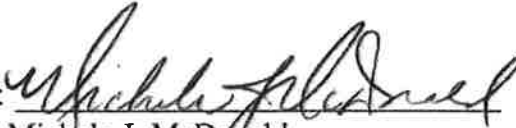
By: _____
Dennis J. Krysiak
Director of Administration
Office of Administrative Hearings

_____, 2016

By: _____
Gordon Medenica
Secretary
Maryland State Lottery and Gaming
Control Commission

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

August 29
_____, 2016

By: 
Michele J. McDonald
Assistant Attorney General
Office of Administrative Hearings

_____, 2016

By: _____
Robert T. Fontaine
Assistant Attorney General
Maryland State Lottery and Gaming
Control Commission