
Minutes of the **Special Meeting** of the **Riverdale City Council** held Wednesday, **January 31, 2007** at 6:30 p.m. at the Riverdale Civic Center, 4600 South Weber River Drive.

Members Present: David Gibby, Mayor Pro-tem
Stacey Haws, Councilor
Gary Griffiths, Councilor
Doug Peterson, Councilor
Shelly Jenkins, Councilor

Others Present: Larry Hansen, Chief Administrative Officer; Steve Brooks, City Attorney; Dave Hansen, Police Chief; James Ebert, Police Lieutenant; Marilyn Hansen, City Recorder; other city staff and approximately 25 citizens.

Mayor Pro-Tem Gibby welcomed all those present and excused Mayor Burrows who is out of town.

D. Action Items

2. a. Consideration of Business License Revocation hearing for Riverdale Dinner and Bingo. (continued)

PRESENTATION/TESTIMONY BY PROPONENT (Continued)

Mr. Junk called Lt. James Ebert as a witness. Lt. Ebert has been employed by the Riverdale City Police Department for fifteen years and was promoted to Lieutenant over investigations six months ago. Lt. Ebert testified as to his involvement with the investigation of Riverdale Dinner and Bingo.

Ms. Dunning cross examined Lt. Ebert.
The City Council questioned Lt. Ebert

PRESENTATION/TESTIMONY BY OPPONENT

Ms. Dunning called Mr. Craig Swett as a witness. Mr. Swett designs computer hardware and software. Mr. Swett testified that in 2004 he was approached by Mr. Diana to design a sweepstakes game for him. Ms. Dunning presented Exhibit #8, computer screen shots of the Magic Ball Sweepstakes game. Mr. Swett discussed how the game is played. Ms. Dunning presented Exhibit #9, a printed Magic Ball game card. Ms. Dunning presented Exhibit #10, Magic Ball Sweepstakes Description and Information prepared by Craig Swett. Ms. Dunning presented Exhibit #11, Magic Ball Game Odds.

Mr. Junk cross examined Mr. Swett. Mr. Junk questioned Mr. Swett regarding the odds of the Magic Ball games. Mr. Swett stated that the odds are printed out prior to the game starting. Mr. Swett testified that the operators have control over how many game pieces will be in each game, selects the twenty-four numbered balls and selects which patterns will be winners, then the odds can be calculated and printed. Mr. Swett testified that once the game begins, none of these operands can be changed.

The City Council began questioning Mr. Swett

The meeting broke for a recess at 8:45 p.m.

The meeting re-convened at 8:55 p.m.

Ms. Dunning called John Geilmann as a witness. Mr. Geilmann is currently the Assistant City Manager over public safety and General Counsel for South Jordan City. From 1994 – 2004, Mr. Geilmann was employed as the Riverdale City Administrator, first as the City Attorney, then as the City Administrator with legal duties. Mr. Geilmann testified that the City had received complaints about Riverdale Dinner and Bingo and he, Mayor Burrows, and uniformed police officers went inside the establishment to check it out and were given free reign of the place that evening. He testified that after the inspection, it was determined that the City would not proceed with any kind of prosecution of criminal activity. They turned it over to the Weber County Attorney who declined to prosecute.

Mr. Junk cross examined Mr. Geilmann.

The City Council questioned Mr. Geilmann.

The City Council continued questioning Mr. Swett

Ms. Dunning called Frank Diana as a witness. Mr. Diana is one of the owners of Blue Sky Entertainment, LLC who runs Riverdale Dinner and Bingo. Mr. Diana testified that Riverdale Dinner and Bingo is a social club that serves dinner and plays bingo. He stated that they also have an electronic paper game and Magic Ball sweepstakes. Mr. Diana testified that phone and internet minutes can be purchased to receive game pieces for the Magic Ball sweepstakes game. Mr. Diana gave an overview of what happens when a member comes into Riverdale Dinner and Bingo and wants to either play bingo or the Magic Ball Sweepstakes game. Ms. Dunning presented Exhibit #12, pictures of signs that are posted at Riverdale Dinner and Bingo regarding gambling. Ms. Dunning presented Exhibit #13, form to be filled out when a patron asks to play bingo for free. Ms. Dunning presented Exhibit #14, copy of point ticket slip given to members to cash in at the end of the night. Ms. Dunning presented Exhibit #15, Magic Ball Sweepstakes mail in entry form. Ms. Dunning presented Exhibit #16, paper Magic Ball game card from a mail in entry form.

Mr. Junk cross examined Mr. Diana. Mr. Junk presented Exhibit #17, picture of a billboard outside of Wendover, Nevada advertising Riverdale Dinner and Bingo.

The City Council questioned Mr. Diana

The meeting broke for a recess at 11:20 p.m.

The meeting reconvened at 11:28 p.m.

Ms. Dunning called Carolyn Harmon as a witness. Ms. Harmon has been the Manager at Riverdale Dinner and Bingo for the last two years. Ms. Harmon testified as to her duties and the operation of Riverdale Dinner and Bingo.

Mr. Junk had no questions for Ms. Harmon.

The City Council questioned Ms. Harmon

CLOSING STATEMENT BY PROPONENT

Mike Junk stated that he looks at both the bingo and Magic Ball as games of chance and indicated that people can win money. Riverdale Dinner and Bingo is attempting is to circumvent the gambling law. We know we have a game of chance and we know that we are going to pay money, we know that we want to engage in a for profit business, but if we tell everybody they are not gambling and we put up signs around that say this isn't gambling – then it isn't gambling. But wait a minute, let's look at Magic Ball. They are selling phone minutes \$0.50 cents per minute. We found them for one cent to one-half cent per minute. How many 100% increase in what you can buy before it becomes a fraud, a fake, or a facade. Adding to the fake and façade, you have the owner of the business who doesn't know how many minutes those people use. If I'm in the business and am truly is a business man selling internet minutes, I'm going to know my bottom line. How many people come in, how many minutes they buy, how many minutes they use, and how much it costs me. He doesn't care, because he pays a flat fee for the minutes and he is there to make a profit on the people coming in to play Magic Ball, which is a game of chance. If he goes through 200,000 cards in 2-5 or 3-5 days he would make \$50,000 per game at \$0.25 cents per game. Riverdale Dinner and Bingo is taking in \$50,000 every 2-5 days in Magic Ball and yet he doesn't know how many phone minutes are being used? The reason he doesn't is because the purpose of this business is, as Mr. Reeves said, so he doesn't have to drive to the border when he can just drive to Riverdale and gamble. That is what people have been doing, they aren't going in there to purchase phone minutes. Who would buy phone minutes for fifty cents per minute when you can buy them for one-half cent? They are trying to circumvent the law and going way too far when something that can be purchased for one-half cent is being sold for fifty cents. Mr. Junk stated that he thinks people are giving consideration to play that game and with that consideration they are taking the opportunity to take a chance to win money.

Mr. Junk stated that he would also argue that there is consideration being given to play the regular bingo. If everyone went in and played for free then that is not gambling, but just because some people can play for free, that doesn't nullify the people who pay, or give that consideration. We have found that most of the people who are buying the dinner are buying some of the other items, and maybe they aren't overpriced. Now that we have found out that all that is allocated to the dinner, no matter what option is chosen, is \$5.00. But we find out that if you donate, for the good will of this business, \$36.00 in a donation for the \$41.00 dinner, you receive ten bingo cards and a bigger chance to win more money. If you are only going to donate \$21.00 then the odds and your ability to win is reduced and if you donate only \$11.00 the odds and your ability to win are reduced even more. Each one is based on the donation made to the business. They get a certain amount of odds based on their donation. Mr. Junk stated that he finds that different than promotions for Coke, McDonald's or even the Albertson's promotion. He stated that he might drink Pepsi, but will purchase whatever product is cheaper. If there is a promotion on one of the products, he might buy one over the other, but either way he gets the product or the value of the product versus paying 50 cents per minute for phone time or one cent per minute for phone time.

CLOSING STATEMENT BY OPPONENT

Elizabeth Dunning stated that she agrees with Mr. Junk, that it comes down to the issue of consideration. For an activity to be unlawful gambling there has to be some consideration paid for a chance to win something of value. There is no question that both a sweepstakes and bingo are distribution by chance and prizes can be won. The question is, is there consideration paid for that activity or is that consideration paid for something else? Ms. Dunning stated that she doesn't think

it is appropriate or useful to judge what you or I would pay for a dinner. The question is whether a transaction of substance has taken place, separate and apart from the chance to win a prize. There is no question that at Riverdale Dinner and Bingo a transaction of substance goes on. Most people go in and buy dinner, eat it, and then play bingo. If people wanted to gamble, we wouldn't have had thirteen playing for free just last Sunday and sixteen people played for free in November. You would think there would be a long line of people at the door to play free bingo. The people come there to socialize, watch the big screen TV, visit with friends, buy dinner and eat it, and play bingo. There is a substantial transaction that has taken place separate and apart from the bingo. Some people eat dinner and don't stay to play bingo. Ms. Dunning stated that it is truly a social club where people use it as a place where they can go and spend the day. That doesn't mean the consideration for dinner or snacks is somehow paid to play bingo. There are significant differences than a situation where you pay to play bingo and significant difference from an ordinary restaurant. In order for a restaurant to stay in business it must turn the tables 3 to 4 times a night, to stay in business. This is a social club where people buy dinner and stay 3 to 4 hours. Something of value is given to people for the money they spend - they play bingo and enjoy it. Proof that they receive something of value is that they come back and pay again for dinner and could play for free, but they don't. If it was really about free bingo everyone would play free bingo.

Ms. Dunning stated that Magic Ball was put in because Frank Diana wants more traffic. The prices for the phone cards were set 2 ½ years ago and at that time he thought it to be a competitive price. If you want to really compare apples to apples, you need to look at if there is a surcharge or a charge to use a pay phone on the lower priced cards. There has been testimony that people do use the phone minutes and internet minutes. They also get a sweepstakes game piece if they come in at lunch and buy lunch or buy snacks and get game pieces for that. This is also a transaction of substance, separate and apart from the sweepstakes game. Something of value has been purchased with the consideration. You may say that you wouldn't pay that much for lunch, but I can go there for lunch and get game pieces or go somewhere else. Like Mr. Junk, I can either buy Coke or Pepsi, or I can go there for lunch, buy a phone card with a chance to win. That is the purpose of a sweepstakes - to sell more product and to make more money. It cannot be the case, that the fact the more you buy, the more chances you have to win, turns a lawful sweepstakes game into illegal gambling, because then the two we looked at tonight and McDonald's are all unlawful because everyone has the element that the more you buy the more chances you have to win. You have more chances to win by buying more butterfingers than sending in a request, one a day, for a free wrapper. If you super size your meal at McDonald's, you get two game pieces. The more you buy, the more chances you have to win, or you can write in and get one game piece in the mail.

Finally the Council has not wanted to hear more about it, but there is a history here. I do think expectations and property rights of people are an important part of the consideration you have to make and if there is something that the Council doesn't like, maybe you are alright with bingo but don't like the internet minutes or some piece that is troublesome, we should have the opportunity to address those issues before a business license is revoked. That is worthy of the Council's respect and attention. Ms. Dunning stated that she would like to point out that the business has been operating for five years and all the testimony is that early on there were a couple of complaints by players. I think you should be persuaded by Mr. Swett's testimony, if nothing else, that there is no way to cheat customers with the game, and that once the sweepstakes starts, no one can pull out the winning pieces or do something else to tamper with it. There have been no complaints from anyone who has gone in there from a customer or member for many years. The only other complaint has been from a competitor, which one of the officers said, he took it for what it was worth. Ms.

Dunning stated that she thinks that is also a consideration that Council should weigh in making the decision it has to make.

Mayor Pro-tem Gibby thanked both counsels for their careful and precise information that has been provided to the Council. He also thanked the witnesses.

Motion: Councilor Peterson moved to close the hearing. Councilor Jenkins seconded the motion.

Call the Question:

The motion passed unanimously.

Mayor Pro-tem Gibby stated that because of lateness and volume of information that they received over the last two nights he suggested that the Council take the information home and place this item on the February 6, 2007 City Council Agenda for consideration of whether or not to revoke the business license of Riverdale Dinner and Bingo. He instructed the Councilmembers not to deliberate with each other.

D. Adjournment

With no further business to come before the Council at this time, Councilor Peterson moved to adjourn the meeting. Councilor Jenkins seconded the motion. The motion passed unanimously. The meeting adjourned at approximately 12:13 a.m.

Attest:

Approved: February 20, 2007

Marilyn Hansen, City Recorder

Bruce Burrows, Mayor