

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE GAMBLING CONTROL BOARD

In the Matter of the Lawful Gambling License of Hibbing VFW Post 8510	FINDINGS OF FACT. CONCLUSIONS OF LAW AND RECOMMENDATION
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The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on February 9, 10 and 23, 1994, at the Office of Administrative Hearings in Minneapolis, Minnesota, and on February 16, 17 and 18, 1994, at the St. Louis County Courthouse in Hibbing, Minnesota. The record closed on April 27, 1994, upon receipt of the final post-hearing brief.

John Garry, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Gambling Control Board (Board). Kevin P. Staunton and Joseph D. O'Brien, Popham, Haik, Schnobrich & Kaufman, Ltd., 3300 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, Minnesota 55402, appeared on behalf of Rosati-Stilnovich-Koski Post No. 8510, Veterans of Foreign Wars, Hibbing, Minnesota (Post).

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with the Board at S300, 1711 W. County Road B, Roseville, Minnesota 55113.

STATEMENT OF ISSUES

1. Whether the Post violated various provisions of lawful gambling statutes and Board rules as alleged by the Board.
2. Whether any of such violations were willful.

Based upon the record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background

1. Prior to July 1985, the Post conducted bingo and sold pull-tabs under local licensure and regulation. T. 508-9; VFW Ex. 95. In about 1983, John Shock, a member of the Post, was appointed the Post's bingo manager and was in charge of its lawful gambling operations. T. 509, 605-6.

2. The Post was first licensed by the Board to engage in lawful gambling in July 1985, during the time state licensure was being phased in. Bd. Ex. 122, VFW Ex. 95. Under the statutory scheme before 1991, the Post had "Site licenses" for each location at which it conducted gambling. Under the current statutory scheme, since December 1991, the Post has held an organizational license and "premises permits" for each location at which it conducts gambling. Shock continued on as what became known as "gambling manager" of the Post under state licensure. T. 509, 606.

3. On February 19 and 20, 1992, Lawful Gambling Specialists from the Board's Grand Rapids Regional Office conducted a compliance review of the Post. All three lawful gambling specialists from that office, Michael Tuominen, Gary Simonson and Jack Coombe, worked on the compliance review. They found what they considered to be many violations of Minn. Stat. Ch. 349 and the rules governing lawful gambling. Their findings were set forth in Compliance Review Report. Bd. Ex. 164. The Compliance Review Report was sent to the Post in June, 1992, with the standard cover letter requiring submission of a corrective action plan. Bd. Ex. 163.

4. By letter dated September 2, 1992, Bd. Ex. 170, Shock responded to the Compliance Review Report by listing several actions the Post had taken to correct some of the violations noted. On November 12, 1992, Tuominen conducted a post-compliance review with Shock. In a Post-Compliance Memo, Bd. Ex. 165, Tuominen noted that most of the violations had not been corrected.

5. In March, 1993, representatives of the Post met with the Board's Compliance Review Group to discuss the violations noted in the Compliance Review and Post-Compliance Review. They were unable to come to a mutually agreeable resolution of the issues.

6. On May 5, 1993, the Board issued a Statement of Charges and a Notice of and Order for Hearing in this matter. Settlement was again discussed. On November 5, 1993, the Board issued an Amended Statement of Charges and an Amended Notice of and Order for Hearing.

7. Most of the violations noted in the Compliance Review Report deal with activities occurring during 1990 and 1991 and some relate to matters occurring in 1992. Until March 30, 1992, the rules of the Board governing lawful gambling appeared at Minn. R. Ch. 7860. On October 14, 1991, a major revision of the rules was published as proposed rules at 16 State Register 909. The proposed rules repealed all of Minn. R. Ch. 7860 and replaced them with updated and new rules appearing at Minn. R. Ch. 7861 and subsequent chapters. On March 23, 1992, the proposed rules, with some modifications, were adopted and published at 16 State Register 2116. Since rules are effective five business days after publication, they became effective March 30, 1992.

Gambling After Expiration of Site Licenses

8. Paragraph 5 of the Amended Statement of Charges alleges that the Post had a site license for the St. Vasilije Ostrog Serbian Hall in Chisholm,

Minnesota, that expired May 31, 1990, and was renewed by the Post for a one-year term effective August 1, 1990, that the Post continued to sell pull-tabs and hold bingo games at the site between May 31, 1990, and August 1, 1990, and therefore conducted lawful gambling without a license in violation of Minn. Stat. §§ 349.16, subd. 1, 349.2127, subd. 2(b), and 349.2171, subd. 3(a) (1990). It is alleged that such violation was willful within the meaning of Minn. Stat. § 349.16, subd. 3 (1992), and Minn. R. 7865.0020, subp. 3 (Supp. 1992).

9. In April 1989, the Post applied for a new site license for the St. Vasilije Ostrog Serbian Hall in Chisholm. Bd. Ex. 131. The Post applied for a Class A license, which would authorize it to conduct bingo, raffles, paddle wheels, tipboards and pull-tabs. On June 19, 1989, the Board issued the Post a license for the Chisholm site. It was effective June 1, 1989, and expired May 31, 1990. Bd. Ex. 130.

10. In December 1989 or January 1990, the Board mailed the Post the standard renewal form for the Chisholm site gambling license. T. 51-55. The form contained preprinted information regarding the current site license and spaces to be completed by the organization and an acknowledgement of receipt by the local governing body. Bd. Ex. 132, VFW Ex. 27A. On April 30, 1990, the acknowledgement of receipt of a copy of the application was signed by the Chisholm City Clerk. According to the information on the renewal application form, the license application, if approved by the Board, would become effective 60 days from that acknowledged date of receipt unless the local governing body advised the Board of a resolution disallowing such activity. The Post submitted the application to the Board in early May where it was received May 14, 1990. Bd. Ex. 132. The Post's check for the application fee in the amount of \$200.00 was cashed by the Department of Revenue on May 15, 1990. VFW Ex. 27E.

11. The Board did not issue the new license for the Chisholm site until July 24, 1990. The license printed on that date and issued to the Post was effective August 1, 1990, and had an expiration date of July 31, 1991. (Unlike the license issued in 1989, it was not backdated.) Bd. Ex. 130.

12. Despite the fact that the Post had not received a new license, it continued to conduct gambling at the Chisholm site in June and July of 1990. It sold pull-tabs and conducted bingo games there and continued business as usual, including filing of the June and July 1990 gambling tax returns with the Schedules A and B for the Chisholm site. It did so because Shock believed, or at least hoped, that having submitted the renewal application and fee was adequate and would not create a serious violation of the law. Prior to that time, the Post had received, and Shock had usually read, the Board's monthly newsletter. Several of the newsletters had articles making it clear that gambling could not be conducted during a lapse in licensure. Bd. Ex. 153 at 9, Bd. Ex. 154 at 2 and 10, Bd. Ex. 157 at 4, Bd. Ex. 158 at 2. In September 1989, the Post had received a form letter regarding its site license at the Post's own building stating that the license had been discontinued effective September 10, 1989. It specifically stated that because the license had expired, the Post could no longer conduct lawful gambling at the premises.

13. Paragraph 4 of the Amended Statement of Charges alleges that the Post had a site license for a location at the City Hall in Marble, Minnesota,

that expired March 31, 1991, that the Post continued to hold bingo games at that site in April of 1991, and therefore conducted lawful gambling without a license in violation of the statutes. It is alleged that such violations were willful within the meaning of Minn. Stat. § 349.16, subd. 3 (1992), and Minn. R. 7865.0020, subp. 3 (Supp. 1992).

14. The Post had a site license for the Marble City Hall in Marble, Minnesota, where it conducted bingo and sold pull-tabs. In 1991, the existing license expired March 31. Bd. Ex. 125. The Post chose not to renew the Marble site license at the time because the city of Marble desired an organization in or close to Marble have the license. Therefore, the Post stopped conducting gambling at the Marble site when its site license expired on March 31, 1991. T. 627-631. However, on its gambling tax return for April 1991, the Post included a Schedule A for Marble indicating gross receipts from bingo of \$2,550.00 and prizes of \$1,985.00, for net receipts of \$565.00. Bd. Ex. 53. The Post's bingo occasion records show that in fact, these receipts were from the bingo occasion held on March 31, 1991, and were, less \$60.00 in cash expenses paid to three workers, deposited in the Post's Marble account on April 4, 1991. Ex. 26.

15. Paragraph 3 of the Amended Statement of Charges alleges that the Post had a site license from the Board for its VFW Post Building in Hibbing, Minnesota (the "Post Home"), that expired September 30, 1991, that it continued to sell pull-tabs and hold bingo games there between September 30, 1991, and December 1, 1991, and therefore conducted lawful gambling without a license in violation of the statutes. It is alleged that such violations were willful within the meaning of Minn. Stat. § 349.16, subd. 3 (1992), and Minn. R. 7865.0020, subp. 3 (Supp. 1992).

16. The Post conducts bingo and sells pull-tabs at the Post Home. The pull-tab booth is normally located in the front of the Post Home in the bar area, but is wheeled into the bingo room during bingo occasions. In 1991, the Board implemented the statutory changes that changed the licensing scheme to one of licensing organizations and gambling managers and issuing premises permits for each of the individual gambling sites operated by the organization. The Board's practice at the time was to send an organization with multiple site licenses a renewal packet several months prior to the earliest expiring site license. The packet consisted of an organization license application, the gambling manager's license application and premises permit applications for each of the current site licenses. T. 94-95. It was expected that the organizations would send in the premises permit applications for all of their sites along with the organization and gambling manager license applications, but that was not actually required.

17. As noted above, the first expiring site license for the Post was the one for the Marble site that expired March 31, 1991. Ex. 125. The Post received its new renewal packet several months prior to that, but had initially decided not to renew the Marble site. However, this was a changing situation and the Post decided to apply for a premises permit for Marble. On June 25, 1991, the Post submitted its application packet to the Board, which received it June 27, 1991. The Post submitted an application for an organization license, Bd. Ex. 140, a gambling manager's license, Bd. Ex. 117, a premises permit for the Post Home, Bd. Ex. 174, and a premises permit for Marble City Hall, Bd. Ex. 175. Along with the applications, the Board

submitted a check for \$200.00 from the Marble site account for the premises permit there, VFW Ex. 14D, a check for \$200.00 from the Hibbing site account for the premises permit there and a check for \$100.00 from the Hibbing site account for the gambling manager license, VFW Ex. 1B. No application was submitted for the Chisholm site. On July 8, 1991, the Board sent the Post two separate letters, Bd. Exs. 144 and 173. One letter, Bd. Ex. 144, referenced the Marble City Hall file and stated that additional information regarding the organization had to be submitted along with a new sketch of the Marble premises. The other letter, Bd. Ex. 173, stated that a premises permit had not been submitted for the Chisholm site and requested either an application for the site or a letter stating they did not wish to renew the license. Both letters contained form language stating that any gambling conducted after a license expires and before the new license is issued may result in a permanent denial of the application.

18. The Board had not issued the new licenses and premises permits on September 30, 1991, when the site license for the Post Home expired. Nonetheless, the Post continued to conduct lawful gambling there in the form of pull-tabs and bingo. Again, it continued operating as before. By letter of September 18, 1992, Shock informed the Board that the Post wished to drop the premises permit for the Marble site stating that, again, difficulties had arisen with the Marble City Council and that no bingo had been conducted there at any time. VFW Ex. 21. On October 9, 1992, the Board acknowledged receipt of that letter and noted that the premises permit for the Marble location had been discontinued. VFW Ex. 22. In actuality, a premises permit had never been issued for the Marble site to that point in time. Nor had the premises permit for Hibbing or the organizational and gambling manager licenses been issued to that point in time.

19. On October 22, 1991, the Board sent the Post a letter regarding the Hibbing site stating that its premises permit had expired effective September 30, 1991, and that lawful gambling could no longer be conducted at that premises. A copy of the letter was sent to the city of Hibbing. VFW Ex. 5, (Bd. Ex. 146). The Post received that letter on October 24, 1991. Shock immediately closed down the pull-tab booth and cancelled the next bingo occasion which was to be the next evening. The Post put an ad on the radio informing people that the bingo was cancelled until further notice. The same day, the City Clerk called about having received a copy of the letter and was informed that the Post was shutting down the pull-tabs and bingo. Later that evening, a Hibbing Police Officer came to the Post Home to verify that no gambling was being conducted. T. 617-18.

20. The Post did not conduct any gambling at the Hibbing site from October 24, 1991, until sometime in December 1991, when it received the premises permit for the Post Home that had been issued by the Board on December 5, 1991, effective December 1, 1991. Bd. Ex. 135.

21. After receiving the letter on October 24, 1991, Shock tried to call the Board to find out why the licenses and permits had not been issued, but was unable to get any assistance right away. The following week, he talked to someone there who told him that the Post owed another \$200.00 before the premises permit could be issued. T. 619. On Tuesday, October 29, 1991, Shock sent the Board a check for \$200.00 along with a cover letter and a work sheet as he had been directed by the Board. The Board received that on November 4, 1991. VFW Exs. 7 and 9. On November 5, 1991, the Board received a letter

from Shock that he had written on October 28, 1991, stating that the Post had decided not to renew the gambling licenses for Marble and Chisholm and that the only gambling license it wanted to renew was its Hibbing license. VFW Ex. 6. The Post heard nothing from the Board for two or three weeks. At a seminar on charitable gambling in St. Cloud on November 22, 1991, Shock and other people from the Post talked to Board officials, told them they had submitted everything and yet hadn't heard anything from the Board. One of the officials called the Board office and had Shock talk with the supervisor of the Licensing Unit. She told him that they still didn't have the \$200.00 check or that it might be in the file somewhere else and told him he still needed additional information, including a new lease and sketch for the Marble City Hall. That day, the supervisor set the Post a letter confirming the conversation and the matters required to be submitted. VFW Ex. 8. They included a new sketch and lease for the Marble location and the \$200.00 premises permit for the Marble location. The Post submitted the requested information other than that regarding the Marble site for which it did not want a premises permit and it was received by the Board on November 26, 1991. VFW Exs. 10, 11 and 12. In early December, the Board issued the organization license to the Post, a premises license for the Hibbing site and a premises license for the Marble site. Bd. Exs. 125 and 135. All were effective December 1, 1991.

Failure to Reconcile Profit Carryover Variance

22. Paragraph 6 of the Amended Statement of Charges alleges that as of March 31, 1991, the Post had a variance of \$222,818 between its gambling bank account balance (\$9,171) and its profit carryover amount (\$231,989), that as of February 29, 1992, the variance had grown to \$229,533 and that the Post failed to reconcile its profit carryover variances in violation of Minn. Stat. § 349.19, subd. 5 (1992), Minn. R. 7861.0120, subp. 1B(4) <Supp. 1992), and Minn. R. 7860.0150, subp. 2D (1991). It is alleged that such violations were willful within the meaning of Minn. Stat. § 349.16, subd. 3 (1992), and Minn. R. 7865.0020, subp. 3 (Supp. 1992).

23. An organization's net profit is its gross receipts from gambling, less amounts paid for prizes, less reasonable sums expended for allowable expenses and, depending upon the form in use at the time, less gambling taxes. From that amount, the lawful purpose expenditures for the month are deducted leaving a profit figure, which is added to the profit carryover from the prior month and carried to the next month. The profit carryover should be equal to the total cash in the organization's gambling bank accounts at the same point in time. However, it is necessary to do some reconciliation before the amounts can be compared. That is because, like any bank account, there may be checks and funds in transit at the time the bank statement is prepared. It is also because there are several items on the gambling tax return that are not cash basis items. These include inventory figures, certain tax amounts reported on the report, cash from games in play, proceeds from bank loans, and unpaid invoices for games included in inventories. Once the bank statement balances are adjusted for these items, the adjusted gambling account balance should equal the profit carryover for that month.

24. As Gambling Manager, Shock had the responsibility of investigating variances and documenting their causes. This responsibility was specifically

indicated to be his on the Gaming Operations Internal Controls forms submitted by the Post since at least 1989. Bd. Exs. 113-16. In a letter dated October 21, 1985, Roger Swanson, then the Chief Auditor of the Board, reviewed the August 1985 gambling report submitted by Shock. Bd. Ex. 111. That would have been the second report submitted by Shock. Swanson noted two errors in the report: Reporting of interest income incorrectly and the failure to give the name and phone number of the individual preparing the report. The letter then noted that the report had indicated that every pull-tab deal had been reported as being 100 percent accurate and stated that if that was not actually the case (total accuracy virtually never occurs), it would be necessary in the future to transfer money from some other source into the gambling account so that at the time of audit, the profit carryover could be reconciled back to the bank account balance. The auditor suggested that if every deal was not 100 percent accurate, the correct cash amounts should be shown on future reports. Bd. Ex. 111; T. 344-47, 383-84. In the October 1986 Gaming News published by the Board and received by the Post, a brief note appeared under "Tips and Tidbits" referring to the line 30 profit carryover on the monthly tax report and stated that to assess the accuracy of its accounting, the organization should have resources that match the amount on line 30. It went on to state that when the gambling manager presents the report to the organization monthly, the gambling manager might be asked about the profit carryover accuracy then stated "The Board will ask about it!" Bd. Ex. 151 at 7. The November 1986 Gaming News contained an article stating that the Board was now expecting organizations to review profit carryover on a regular basis to see that the dollar amount on line 30 was consistent with the balance in the gambling account and that this was one of the things occurring to signal a change in the regulatory attitude. Bd. Ex. 152 at 5. The October 1987 Gaming News provided a copy of a new form entitled Gambling Fund Reconciliation specifically for the purpose of reconciling the bank statement balance with other cash flow adjustments to determine an adjusted gambling account figure to compare it to the profit carryover on the gambling tax report and determine the variance, if any. The newsletter stated that the form was for the organizations' use only and was not to be filed with the monthly tax reports. Bd. Ex. 153 at 1 and 10. In the November 1987 Gaming News, the Board published a copy of the new monthly gambling tax return form that was to be used beginning January 1988. The profit carryover was now shown on line 40 and line 41 was a new item for the total reconciled balance of all gambling accounts. The description of the new report stated that line 41 should equal line 40 if the gambling bank account has been reconciled to the profit carryovers. Bd. Ex. 154 at 6 and 8. The March 1988 Gaming News reprinted another copy of the gambling fund reconciliation form. Bd. Ex. 155 at 9 and 11. The April 1988 Gaming News again reprinted the form. Bd. Ex. 156 at 3 and 11.

25. For six or eight months after the Post became licensed by the Board in July 1985, Shock himself prepared the gambling tax returns that the Post filed. T. 510. After that, he was assisted in preparing the returns by a member of the Post's auxiliary, Jenny Kruc. He did so because he was unable to fill them out correctly and they were returned to him by the Board. Bd. Ex. 111. He was also unable to correct them when he called the Board for assistance. T. 608-610. Kruc was unpaid but was willing to help and had some bookkeeping experience. T. 610-611. In 1987 or 1988, the gambling operation was making enough money and the Post hired an accountant, Tom Teasick, to prepare the reports. It appears that Teasick prepared an amendment to the

December 1987 gambling tax return and the returns themselves starting January 1988. VFW Ex. 31. He did so from then until October 1991. T. 511 and 611-613.

26. It was the practice of the Post to have the gambling secretary, and perhaps Shock on occasion, prepare the Schedules B and C and send them to the accountant each month. The accountant would prepare the tax return and perhaps some supporting forms or documents and return them to the Post where they were reviewed and signed by Shock and the Post commander. The gambling secretary then sent the return into the state. T. 787-789. The very first charitable gambling newsletter issued in May 1985 noted that an organization conducting gambling on its own premises could not charge itself rent, but that the cost of improving, expanding, maintaining, or repairing real property owned or leased was to be recorded on Schedule C. Bd. Ex. 259 at 3. Schedule C was the form on which the organization was to record its "lawful purpose contributions." The October 1985 charitable gambling newsletter contained a note regarding repairs and stated that the line for repairs on the gambling tax return was for repairs to gambling equipment and that maintenance or repairs done to real property were considered a lawful purpose and should be shown on Schedule C. Bd. Ex. 260 at 6. However, the Schedule Cs submitted by the Post never included any such real property expenses until the June 1988 report which was prepared using the new Schedule C form which provided a separate section for reporting such expenditures. Prior to that time, the Schedule Cs were simply a form for listing all lawful purpose contributions. Subsequently, a Schedule D was devised for reporting of board-approved expenditures separately.

27. The Post began developing an increasing profit carryover variance starting in September 1985. Fully reconciled gambling account balances are not available in the record in this matter. However, statements for the Post's gambling account from August 1985 through June 1988 show that the Post consistently spent more out of its gambling account than was reported as expenditures or expenses on its gambling tax returns. VFW Ex. 31. As shown on a summary of the bank statements and tax returns for the period prepared by the Department of Revenue, Bd. Ex. 266, beginning in September 1985, the Board spent \$3,000 to \$4,000 more per month than was reported as expenditures on its tax returns. In 1987, the amounts were higher, twice reaching over \$10,000. In early 1988, the checks clearing the bank exceeded the amounts reported on the monthly tax returns by amounts from \$10,000 to \$21,000. For the period from August 1985 through June 1988, the difference between the total expenditures reported on the tax returns and the checks clearing the bank were as follows:

	Total Expenditures <u>Per Tax Return</u>	Debits <u>Per Bank Statement</u>	Variance
1985	\$ 13,888.44	\$ 29,300.72	\$ 15,412.28
1986	47,024.85	83,533.29	36,508.44
1987	45,078.52	129,013.81	83,935.29
1988	54,782.00	115,767.55	60,985.55
	\$160,773.81	\$357,615.37	\$196,841.56

28. Beginning in January 1988, the Post's gambling reports were prepared by Teasick. At the same time, the new tax return forms added line 41 for the reporting of the total gambling bank account balances at the end of the month. Those figures show the following profit carryover variances for the period from January 1988 through December 1989:

Month	PCO Line 40	Bank Bal Line 43	PCOV	Reconciled Bank Bal.	Adjusted PCOV
Jan-88	155455	9583	-145872		
Feb-88	169004	9872	-159132		
Mar-88	188884	12493	-176391		
Apr-88	210861	11435	-199426		
May-88	226470	8501	-217969		
Jun-88	231794	13977	-217817	12385	-219409
Jul-88	237932	13769	-224163	25615	-212317
Aug-88	238990	17477	-221513	26697	-212293
Sep-88	233768	10891	-222877	19724	-214044
Oct-88	228643	6850	-221793	18976	-209667
Nov-88	232510	12946	-219564	22483	-210027
Dec-88	234745	11521	-223224	22458	-212287
Jan-89	241126	19648	-221478	28839	-212287
Feb-89	231706	9926	-221780	19418	-212288
Mar-89	228702	6688	-222014	16420	-212282
Apr-89	231623	11224	-220399	19342	-212281
May-89	233228	15086	-218142	20971	-212257
Jun-89	230215	8676	-221539	17958	-212257
Jul-89	232796	10137	-222659	20539	-212257
Aug-89	238156	14932	-223224	26809	-211347
Sep-89	242758	19264	-223494	31773	-210985
Oct-89	242118	20686	-221432	31333	-210785
Nov-89	244490	21677	-222813	33705	-210785
Dec-89	236641	13592	-223049	25857	-210784

1 Beginning in 1988, the Post had a separate bank account for the Chisholm site and, later, a separate account for the Marble site. Those bank accounts are not a part of the statements in VFW Ex. 31. The Department of Revenue's analysis of VFW Ex. 31 found that there was a \$72,833.15 shortage in the credits reported on the bank statements when compared to the receipts reported on the tax returns. Bd. Ex. 266. However, an analysis of the tax returns for the period indicates that was the approximate amount of the receipts at the Chisholm and Marble sites. Therefore, it appears that the Post most likely did deposit all of its gambling receipts in the appropriate bank accounts. Further, the existence of the Chisholm and Marble accounts somewhat distorts the expenditure comparisons for 1988.

VFW Ex. 31. These figures track very well with the expenditure variances found by Revenue in Bd. Ex. 266. Teasick, or someone from his firm, prepared and attached profit carryover variance reconciliation forms to the June 1988 through December 1989 client copies of the tax returns. VFW Ex. 31. Those reconciliations were not carried over to line 43 of the returns.

29. By early 1986, Shock had become aware of the increasing profit carryover variance. Someone had told him that his profit carryover on what was then line 30 of the tax returns should equal what was in the bank. T. 647. He called the Board about it and got some indication that he was not reporting something that he ought to be, which he recalled as "allowable expenses." T. 648. He was told that if he included all the lawful contributions and other items it would balance. T. 648. However, Shock did nothing to reconcile the variance until the time the Post retained Teasick as an accountant. T. 523. After Teasick was hired, he noted the variance and discussed it with Shock. At that point in time, the variance was approximately \$190,000, which would have been in March or April of 1988. Shock explained to him that there had been lawful expenditures that had not been reported. Teasick told him that it should be corrected and that either Teasick or someone would have to go back to 1985 and correct the reports or else a one-time adjustment would have to be made. T. 648-649. Shock then went to the Board office and talked to Roger Franke, then the Executive Director, about the Post's profit carryover variance. He informed Franke that they had a profit carryover variance of \$190,000 or so at the time, that he had talked with Teasick about it and that the accountant wanted to know if they had to go back to 1985 and redo all the reports or if he could just make an adjustment. Franke told Shock to have Teasick call a member of the Board's staff to discuss it. Shock informed Teasick of what Franke had told him. To Shock's knowledge, Teasick never took any steps to reconcile the variance. T. 649-650. Teasick was not a witness in this matter. The reconciliations attached to the June 1988 through December 1989 tax reports, VFW Ex. 31, show that the accountant did attempt to determine the amount of the variance at that time. As noted above, the Post began reporting its property-related expenses on the Schedule Ds in June 1988 and to a greater extent in August 1988, perhaps because of the change in the Schedule C form at the time or perhaps because of advice from the accountant. After that point, the profit carryover variance remained fairly constant at approximately \$220,000. After adjustments on the reconciliation form prepared by the accountant, the variance was stabilized in the area of \$212,000. On the December 1988 gambling fund reconciliation form, the accountant noted "Difference is old reports done by John that didn't have all expenses etc. shown." VFW Ex. 31. From January 1990 through September 1991, while Teasick remained the accountant, the Post's reported profit carryover variance remained fairly constant, as follows:

Month	PCO <u>Line 40</u>	Bank Bal <u>Line 43</u>	PCOV
Jan-90	242288	18442	-223846
Feb-90	242180	19919	-222261
Mar-90	234230	14775	-219455
Apr-90	237621	16344	-221277
May-90	234346	14754	-219592
Jun-90	240562	19908	-220654

Month	PCO Line 40	Bank Bal Line 43	PCOV
Jul-90	230940	8840	-222100
Aug-90	230813	9858	-220955
Se.p-90	231493	9126	-222367
Oct-90	229008	7495	-221513
Nov-90	232460	11696	-220764
Dec-90	232674	12494	-220180
Jan-91	231927	12269	-219658
Feb-91	233199	12199	-221000
Mar-91	231989	9171	-222818
Apr-91	235493	13576	-221917
May-91	237392	17705	-219687
Jun-91	234277	12353	-221924
Jul-91	228282	8829	-219453
Aug-91	230177	11348	-218829
Sep-91	228514	8178	-220336

Bd. Exs. 38 through 58. (These exhibits are the Revenue copies, so they don't have reconciliation forms attached.) Teasick never did a complete reconciliation of the profit carryover variance that had existed as of June 1988.

30. Prior to October 1987, the Post Home had been in a building it owned at 1302 13th Avenue East in Hibbing. Bd. Ex. 122. In June 1987, the Post requested and received Board approval, in writing, to expend lawful gambling funds for 60 percent of its cost to purchase and remodel a new Post Home at 704 East 41st Street in Hibbing. It estimated the total cost to the organization to be \$150,000 to be financed by a mortgage in that amount with payments of \$4,983 for 36 months. Bd. Ex. 256. On September 11, 1987, the Post borrowed the \$150,000 from the bank and, presumably, started making the payments in October 1987. Bd. Ex. 257. On an application signed by the Post Commander on October 16, 1987, the Post applied for a site license for the new Post Home stating that it was the owner of the premises. Bd. Ex. 136. It continued to use the old address on its gambling tax returns until January 1988. VFW Ex. 31. In April 1988, Shock wrote to Roger Franke, the Board's Executive Secretary, for approval to spend gambling funds to pay off an additional loan of \$50,000 from the bank for replacement of the roof of the building and for completing kitchen and bathroom facilities. The loan was to be secured by mortgages on the new and old VFW buildings and repayment would be over nine years at approximately \$2,900 per month. By letter of April 13, 1988, Franke approved the expenditure. Bd. Ex. 257.

31. On May 8, 1990, a motion was passed at a membership meeting of the Post to donate the old Post Home to the Arrowhead Economic Opportunity Agency if the Board approved using \$55,000 from the charitable gambling account to pay toward the Post Home mortgage. Ex. 6. In July, the Post sent Tom Anzelc, then Executive Director of the Board, a letter requesting approval to apply \$55,000 of gambling proceeds to debt retirement on the new building and then to donate the old building to the Arrowhead Economic Opportunity Agency. The letter stated that the old building had been appraised at \$67,000. Notes on the letter by Anzelc indicate that he obtained further information that the old building was collateral on the loan on the new building. By letter of

November 9, 1990, Anzelc advised the Post that gambling funds could not be used in the manner proposed. Bd. Ex. 258. In October 1992, the old building was sold for \$45,000. \$40,000 was received upon closing the sale, which was applied to the mortgage on the new building, and the balance of \$5,000 was to be paid to the Post within one year. Bd. Ex. 35.

32. The first property-related expense reported by the Post appeared on Schedule C of its June 1988 gambling tax return. VFW Ex. 31. That was \$1,655 for stainless steel sinks for something reportedly approved by the Board on May 10, 1988. The first expense related to the acquisition and improvement of the Post Home was reported on the August 1988 gambling tax return. At that time, a total of \$5,330 was reported for payments to construction contractors and materials suppliers. The building payment of \$2,900 was first reported on the October 1988 gambling tax return. VFW Ex. 31. From then through October 1989, payments made to the bank along with payments to contractors and material providers were reported as lawful purpose expenditures. From then through June 1993, the Post reported the \$2,900 bank payments on its Schedule Ds. From June 1988 through June 1993, the Post reported on its Schedules Cor D, as appropriate, a total of \$155,629 of such expenditures. See Table D attached to the Board's post-hearing brief summarizing VFW Ex. 31 and Bd. Exs. 38 through 85.

33. In October 1991, the Post hired a new accountant, Jack Pusateri, the owner of a company named Comprehensive Business Services. He is not a CPA or licensed public accountant, but has a degree in Economics and Accounting, a background in Management and since 1982 has been operating Comprehensive Business Services providing bookkeeping, tax and consulting services for several companies on the iron range. He has experience in charitable gambling and was, in 1985, the Gambling Manager for the Hibbing Youth Hockey Association. T. 683-684 and 710-713. He continues to be the Post's accountant and prepares its lawful gambling reports, does its general accounting and its various other tax returns. T. 714. From October 1991 through February 1992, the monthly Lawful Gambling Activity Summary and Tax Returns prepared by Pusateri showed the following profit carryover variances:

Month	PCO Line 43	Bank Bal Line 45	PCOV
Oct-91	228523	9896	-218627
Nov-91	227066	5868	-221198
Dec-91	229084	4289	-224795
Jan-92	234973	4615	-230358
Feb-92	235881	6348	-229533

Bd. Exs. 59-63.

34. On February 19 and 20, 1992, the Board conducted the compliance review of the Post. During that review they noted the large profit carryover variances on the Post's 1991 tax returns. Shock informed the lawful gambling specialist during the review that the Post did not regularly reconcile its profit carryover and that its accountants had once asked the Department of Revenue about doing a reconciliation, but that the accountants never followed up on doing it. Shock also stated at the time that the large variance was due to the Post not reporting on its tax returns several large lawful purpose

expenditures relating to building improvements dating back to 1985-1986. Bd. Ex. 164 at 13-14.

35. By letter of February 28, 1992, Swanson, who was then supervisor of the Lawful Gambling Tax Unit of the Department of Revenue, sent a memorandum to all gambling organizations advising them of the change in Minn. Stat. § 349.19, subd. 5, requiring them to file a gambling fund reconciliation form with each monthly lawful gambling activity summary and tax return. The memorandum provided a copy of a new schedule F, Gambling Fund Reconciliation form for that purpose. The instructions for the form stated that if the gambling fund balance was different from the profit carryover for the month, the organization was required to identify the reason for the variance, if necessary, by going back through previous month's reports until the source of the difference was identified. Bd. Ex. 166.

36. On line 41 of its March 1992 gambling tax return filed with the Department of Revenue, the Post reported "Board-approved expenditures" of \$228,899. Bd. 64. A gambling fund reconciliation form filed with the tax return that month showed that the adjusted gambling account balance was \$3,485. The amount reported on line 41 as Board-approved expenditures was the amount necessary, when combined with the prior month's profit carryover and the lawful purpose expenditures reported on line 40, to arrive at a profit carryover for the month in an amount equal to \$3,485. It was Pusateri's intention to eliminate the profit carryover variance by reporting the Board-approved expenditures in the amount of \$228,899. Pusateri signed the return on April 19, 1992. The form was also signed by the Post Commander and Shock. Both of their signatures appear to have been dated by Shock as April 19, 1992, although there has been some alteration in the dates and Shock may have made a mistake or redated them from an earlier date. Bd. Ex. 64, p. 2. The Scheduled for March 1992 filed with the Board (this form is filed separately from the gambling tax return filed with Revenue) contained two entries on Schedule D. Bd. Ex. 101. The first was a check written March 26 to Security State Bank for \$2,900 for the payment on the building mortgage. The second was an entry in someone else's hand dated simply "1987" listing "various" for check number and setting forth an amount of \$2,259.99 for building repairs reportedly approved by the Board in June 1987. The total of the two figures was listed as \$2,288.99, which is obviously erroneous. The second entry appears to be in the handwriting of Backstrom, the gambling secretary. It appears to be the same as the handwriting on Bd. Ex. 61, Schedule B, which Backstrom testified she filled out. T. 854. It seems most likely that Pusateri called Backstrom or Shock and told her to add the entry to Schedule D in the amount of \$225,999, which would have made the total \$228,899, but, instead, she entered the amount of \$2,259.99 and the total of \$2,288.99. She testified that she was not involved in the Post's effort to reconcile its profit carryover variance except as to "one schedule that the accountant included some figures on." T. 868.

37. In June 1992, the Post filed an amended tax return for the month of March 1992. Bd. Ex. 65. The amendment made some minor adjustments to various figures, but no change to line 41 where the Board-approved expenditure of \$228,899 had been reported. The other adjustments resulted in the profit carryover for the month changing to \$2,561 and thus, the profit carryover variance changed from the previously reported zero to a \$76 shortage.

38. At the November 12, 1992 Post compliance review between Lawful Gambling Specialist Tuominen and Shock, Tuominen noted that the profit carryover variance had been decreased by the entry of a payment of \$225,999 which reduced the profit carryover to \$3,561 (as shown on the amended tax return, Bd. Ex. 65. Apparently an amended Schedule D correcting the figures of \$2,259.99 had also been filed). At that time, Shock told Tuominen that the accountant had made the entry on the basis of that being the total amount of unrecorded Schedule D expenditures dating back to 1985-86 and that the Department of Revenue had informed the Post that the adjustment was not permissible without a full accounting going back that far. In the Post-Compliance Memo, Tuominen again stated that the organization must reconcile its profit carryover with cash balance on hand and that the organization should contact the Department of Revenue with questions concerning the proper completion of the gambling fund reconciliation form. Bd. Ex. 165. On March 15, 1993, shortly after representatives of the Post had met with a compliance review group, Pusateri sent the head of that group a letter regarding the profit carryover entries. Bd. Ex. 150. He attached to it copies of earlier letters that neither the Board nor the Department of Revenue had previously received. He also attached a Schedule D for March 1992 showing the \$225,999 entry that was done on a "whited-out copy" of the February 1992 Schedule D. Bd. Ex. 100. He stated in the 1993 letter that he had included in the 1992 return the exact amount needed to reconcile the profit carryover variance. He stated that when the Gambling Manager and trustees of the Post had been questioned about the profit carryover variance, they had informed Pusateri that major building improvements were made but never included on the monthly returns and that these repairs had been verbally approved by Roger Franke. He also referred to September 1992 letters by which the Post had requested that he audit all the gambling accounts back to July 1985 and stated that that review had been initiated but was stalled because data from 1985 was not readily available. He also referred to the fact that he had indicated in his attached letter of April 19, 1992, to the Board (which the Board had never received) that the entry was "Not exact, but arbitrary because of the need to complete Schedule F."

39. In 1993, the Department of Revenue developed a project of eliminating profit carryover variances during that year. T. 357. On February 19, 1993, Swanson issued a memo to all licensed gambling organizations regarding that project, the emphasis that would be placed on examining profit carryover variances by the Department of Revenue and methods of correcting variances. That generally required the organizations to identify past reporting mistakes by reviewing prior reports and submitting amended reports or requesting permission from the Department of Revenue for an authorized adjustment to eliminate remaining unidentified variances. Bd. Ex. 167. The February 1993 Gaming News provided generally the same information. Bd. Ex. 159 at 1 and 4.

40. It was well into 1993 and perhaps 1994 before Pusateri was able to gather any significant amount of documentation of the Post's gambling reports and bank accounts prior to 1990. For a long period of time, the Post's gambling records had been stored in the basement of Backstrom's home because her husband, Ronald, had been the Post's quartermaster responsible for maintaining the Post's books and records. There wasn't enough room at the old Post Home. T. 839-40. The Post's gambling account carried Backstrom's address until March 1988, when the address was changed to the Post Home. VFW

Ex. 31. On August 11, 1989, a "flood" or sewer backup three feet deep in the Backstrom's basement destroyed many of those gambling records. Thus, checks and other detailed statements no longer exist. Pusateri attempted to obtain copies from the bank, but they could only, as a practical matter, provide copies of the monthly statements. Pusateri, with some help, compared the bank statements with the Post's gambling reports back to August 1985. He compared the expenses reported on the gambling returns to the debits to the checking account and arrived at numbers very close to those determined by the Department of Revenue in its compilation. VFW Ex. 31, Bd. Ex. 266. By letter dated February 3, 1994, faxed to the Board on February 4, 1994, he sent his summary comparing the reported expenses to the checking account debits and stated that the profit carryover variance was initially reported to Revenue as early as the June 1988 tax return. He went on to state, "The existence of the profit carryover variance, and its reconciliation, relate to pre-1989 lawful purpose and/or allowable expense disbursements, the vast majority were incurred in connection with the acquisition and renovation of the Post's building. These expenditures were not reported in the Post's monthly tax returns, which resulted in the creation of the profit carryover variance." The bank statements and early tax returns of the Post were not submitted to Revenue at the time, but were made an exhibit at the hearing. VFW Ex. 31.

41. From March 1992 through November 1993, the Post gambling tax returns indicate the following profit carryover variances:

<u>Month</u>	<u>PCO Line 43</u>	<u>Bank Bal Line 45</u>	<u>PCOV</u>	<u>Reconciled Bank Bal.</u>	<u>Adjusted PCOV</u>
Mar-92	3485	3485	0		
Mar-92 (Amended)	3561	3485	-76		
Apr-92	810	1010	200	1010	200
May-92	1055	7151	6096	5930	4875
Jun-92	4575	6074	1499	4575	0
Jul-92	12786	11995	-791	11995	-791
Aug-92	22502	10240	-12262	9662	-12840
Sep-92	28672	10031	-18641	10031	-18641
Oct-92	32480	33259	779	32480	0
Nov-92	31585	31585	0	31585	0
Dec-92	34628	34218	-410	34218	-410
Jan-93	37334	37334	0	37334	0
Feb-93	40435	40435	0	40435	0
Mar-93	40547	40547	0	40547	0
Apr-93	40912	40912	0	40912	0
May-93	37493	37493	0	37493	0
Jun-93	41576	27345	-14231	41576	0
Jul-93	47033	47033	0	47033	0
Aug-93	50425	50425	0	50425	0
Sep-93	49148	16115	-33033	18581	-30567
Oct-93	46213	15549	-30664	15549	-30664
Nov-93	50169	19665	-30504	19665	-30504

Bd. Exs. 64-85. However, Pusateri has prepared amendments for these reports.
Bd. Ex. 255.

Filing of False Reports

42. Paragraph 7 of the Amended Statement of Charges alleges that the Post filed gambling tax returns with the Department of Revenue that contained false information in that the Post (a) reported a false amount of \$228,899 for Board-approved expenditures on its return for March 1992, (b) failed to report the gross and net receipts and prizes paid for raffles conducted in conjunction with fishing contests in February 1990 and February 1991, and (c) failed to report at least \$900.82 in interest derived from lawful gambling proceeds between December 1988 and September 1991, in violation of Minn. Stat. § 349.19, subd. 5 (1992), Minn. R. 7861.0120, subp. 3D, and 7865.0020, subp. 1B (Supp. 1992), and Minn. R. 7860.0120, subp. 3, and 7860.0600, subp. 1B (1991).

43. The facts relating to the false reporting of \$228,899 for Board-approved expenditures on the March 1992 gambling tax return are set forth in the foregoing section.

44. The facts relating to the allegation of false reporting in conjunction with the fishing contest are set forth in the following section.

45. The allegations related to the failure to report interest income also relate to the fishing contests and are set forth in the following section.

Fishing Contests/Raffle Violations

46. Paragraph 8 of the Amended Statement of Charges alleges that the Post conducted raffles in connection with the fishing contests in February, 1990 and February, 1991 without complying with the requirements of Minn. R. 7860.0270, subs. 1-3 and 6 (1991).

47. Paragraph 9 of the Amended Statement of Charges alleges that the Post failed to maintain the records required by Minn. R. 7860.0270, subp. 4 (1991), for the raffles conducted in conjunction with the fishing contests.

48. Paragraph 10 of the Amended Statement of Charges alleges that in 1990 and 1991, the Post used gross profits from lawful gambling for expenditures which did not constitute allowable expenses or lawful purposes in violation of Minn. Stat. § 349.15 (1990 and Supp. 1991), and that such expenditures consisted of (a) expenditures in connection with the fishing contests, (b) expenditures for air handling equipment in excess of the amount approved by the Board for that expenditure, (c) real property and capital asset expenditures not approved by the Board, and (d) other expenditures not constituting allowable expenses or lawful purpose expenditures.

49. For many years the Post had sponsored an ice fishing contest annually. It was a "small contest". cost \$1.00 to enter and the Post gave away prizes for fish and perhaps other prizes as well. Shock and other members of the Post were aware of a big ice fishing contest held in Park Rapids by the Eagles Club every year. Shock and other members had participated in the Park Rapids contest at times. At one Post meeting, it was suggested that the Post might do a fishing contest like the Park Rapids Eagles and so Shock and a number of other members went to Park Rapids to talk with

the Eagles Club about how the contest was run. They told the Eagles that they wanted to do a fishing contest just like theirs and the Eagles provided them with copies of their flyers and tickets and told them how the contest was run. The Post decided to hold such a fishing contest. They opened up a separate fishing contest account and set up a contest for February 10, 1990. Because the Park Rapids Eagles' material indicated that club's charitable gambling license on the flyers and tickets, Shock assumed that the fishing contest would be a charitable gambling event. Flyers were produced, Bd. Ex. 177, and the Post promoted the contest. Sometime prior to the contest on February 10, 1990, Shock was informed by the Post's quartermaster at the time that the accountant Teasick had called and said that he had been talking to one of the state people and that the fishing contest shouldn't be "on the gambling side, it belongs on the Post side." T. 654. That made Shock happy because, as Gambling Manager, he would no longer have responsibility for the contest. Instead, the quartermaster, being the Post's chief financial officer, would have the responsibility.

50. The fishing contest was conducted in February 1990 and again in February 1991. Both were conducted identically. Bd. Exs. 177 and 178. People bought tickets at \$20 per contestant which entitled them to participate in the fishing tournament as well as to win 30 different door prizes ranging from a new pickup truck to a colored T.V. People did not have to be present to win any of the door prizes. A duplicate grand prize, another pickup truck, was awarded to the person who sold the winning ticket. There were also many fishing prizes. Twenty cash prizes, ranging from \$2,000 down to \$100 were awarded to the largest fish in various categories. A one-week Hawaiian trip for two was given to a person drawn from among all contestants entering a legal fish and a small fishing boat, motor and trailer was awarded by another drawing at which the contestants did not have to be present to win. There was also a separate contest where persons at the ice fishing contest put their names in a barrel and a drawing was held every minute for small cash prizes. Bd. Ex. 178, T. 656.

51. The fishing contests were major undertakings with considerable expenses. Some 4,000 people attended the 1990 contest and somewhat fewer than that attended in 1991. Food booths were set up at which food and beverages were sold by the VFW, parking areas were arranged and had to be plowed out. Arrangements for traffic control were made with local law enforcement agencies. Holes had to be drilled in the ice. The contest included more than just the Saturday afternoon fishing contest itself. There was a Friday night welcome dance at the Post Home and a Saturday evening awards presentation and "fishermen's ball". Arrangements had to be made for those events, including hiring the bands.

52. The Post conducted the 1990 and 1991 fishing contests as fund raisers "on the Post side" and reported nothing, including the gross and net receipts, or prizes paid, or interest earned on the fishing contest account on any lawful gambling report submitted to the Board or Revenue. The Post admits that the fishing contests in 1990 and 1991 constituted raffles as defined by Minn. Stat. § 349.12, subd. 3, but was not of that opinion at the time of the fishing contests. Bd. Ex. 1 at 14. In the Compliance Review Report, it was reported that the Post had conducted unreported raffles in conjunction with its annual fishing contest in 1990 and 1991. The report noted that "lawful gambling" included raffles and directed the Post to contact

Revenue to determine its tax liabilities and how to report gross receipts, prizes and net receipts for the unreported raffles and that the receipts generated must be accounted for as gambling funds. Bd. Ex. 164 at 11. The report stated that the gross receipts for the 1990 raffle had totalled approximately \$126,100 and for the 1991 raffle had totalled approximately \$76,750.

53. The Post had intended to run another fishing contest in February 1992. However, a week or so before the contest, it received a letter from the Board stating that there were several illegalities regarding the selling of raffle tickets in connection with the fishing contest. The letter was similar to a letter dated January 30, 1992, that the Board sent to the Park Rapids Eagles regarding its fishing contest. VFW Ex. 89. After receiving the letter, Shock called the Board to find out what could be done to bring the contest into compliance and even had someone from the Governor's office intercede. Shock also talked to someone from the Park Rapids Eagles who told him that they were going to proceed with their contest. Shock or someone else from the VFW spoke with the Board again and was unable to resolve anything. The Post's officers met and decided to cancel the contest. They put ads in the paper and on the radio stations regarding the contest being cancelled and returned all the money that had been paid for tickets to that point. T. 666.

54. In a memo dated November 10, 1992, Pusateri informed the Post officers and members that from his preliminary review of the 1991 fishing contest raffle, it was his opinion that the raffle itself constituted charitable gambling. Bd. Ex. 149. Pusateri then prepared an amended gambling tax return for the month of November 1993 for the purpose of reporting the 1990 and 1991 fishing contest raffles. Bd. Ex. 183, T. 699-700. The return was signed by the Post commander and Shock and submitted to Revenue, which received it January 18, 1994. The Post commander testified that he thought the raffle figures shown on line 2 of the return related to raffles conducted in November 1993. T. 923. The return has not yet been analyzed by Revenue. T. 368-70. No explanation of the raffle figures was provided with the return. The February 3, 1994 letter faxed to Revenue by Pusateri indicates that he had reviewed the returns for April 1992 through November 1993, for the purpose of evaluating the profit carryover variance during that period and had uncovered several reporting errors and omissions which necessitated amending the returns. Bd. Ex. 255.

55. The Post admits that it failed to comply with the requirements of Minn. R. 7860.0270, subps. 1-3 and 6, with respect to the raffles conducted in conjunction with the fishing contests held in 1990 and 1991. Bd. Ex. 1 at 15. These violations included those drawings that required the persons to be present in order to win, prizes that had not been paid for in full prior to the drawing, not maintaining a separate log book for the sale of tickets and, in 1990, not awarding all the prizes advertised.

56. The Post does not dispute that it violated Minn. R. 7860.0270, subp. 4 (1991), by failing to retain the winning ticket stubs for the raffle prizes awarded and not maintaining a current record of raffle proceeds or a record of allowable expenses being deducted from the raffle net receipts. VFW Memorandum at 46.

57. Paragraph 10(a) of the Amended Statement of Charges lists expenditures made from the fishing contest account during 1990 and 1991. The expenditures are classified in Table B attached to the Board's post-hearing brief. The following amounts were expended during 1990 and 1991 in the following categories:

Prizes for catching fish	\$13,500.00
Snowplowing, moving the weigh-in building, parking, buses	10,133.43
Payments to Sullivan Supply	5,000.00
Drilling fishing holes	4,392.00
Advertising for fishing contest	4,166.49
Purchase and repair of food and concession stands	2,424.11
Transfer to Post's general account	2,127.91
Food for food stands	2,039.50
Identifying hats for contest workers	1 '436.46
Loudspeaker system	1 '106.00
Generators	820.50
Portable toilets	720.00
"Giveaway" prizes	672.70
Band for dance	300.00
Stickers for buttons	295.03
Insurance for the truck prize	128.00
Cleanup	100.00
Miscellaneous expenses	460.96
TOTAL	\$49,823.09

The Post acknowledges that the \$5,000 in payments to Sullivan Supply and the \$2,127.91 in transfer to its general account were neither allowable expenses nor lawful purpose expenditures. T. 704-706 and Bd. Ex. 181. Deducting those amounts, \$42,695.18 is the total claimed to be fishing contest expenses.

58. The Post does not contest the allegations of the remainder of paragraph 10 of the Amended Statement of Charges that the expenditures listed in subparagraphs (b), (c) and (d) did not constitute allowable expenses or lawful purpose expenditures. VFW post-hearing brief at 46-48. These expenditures included almost \$20,000 for an air conditioning system for the Post Home over and above the amount that the Board had approved could be expended from lawful gambling proceeds for that purpose, \$887.69 in real property and capital asset expenditures that had not been approved by the Board and \$3,116.48 in miscellaneous expenditures that were neither for allowable expenses or lawful purpose expenditures.

Failure to Report to Membership and Obtain Membership Approvals

59. Paragraph 11 of the Amended Statement of Charges alleges that authorization from the Post's membership for all of its expenditures of lawful gambling gross profits were not recorded in the Post's meeting minutes from January 1, 1990 through December 1992, in violation of Minn. Stat. § 349.19, subd. 3 (1992).

60. Paragraph 12 of the Amended Statement of Charges alleges that from January 1, 1990 through December 1992, the Post failed each month to provide its membership with all the information regarding lawful gambling operations required in monthly membership reports in violation of Minn. Stat. § 349.19, subd. 5 (1992), Minn. R. 7861.0120, subp. 38 (Supp. 1992) and Minn. R. 7860.0120, subp. 2 (1991).

61. Paragraph 13 of the Amended Statement of Charges alleges that the Post failed to place a copy of the Compliance Review Report it received in June, 1992, or a copy of the report of the independent financial audit for the year ending December 31, 1991, in its meeting minutes in violation of Minn. Stat. § 349.19, subd. 11 (1992).

62. The minutes of the Post's monthly meetings from January 1990 through 1992 show that membership authorization for some expenditures was recorded. These were for the lawful purpose donations, but not for the allowable expenses, tax payments and Board-approved property-related expenditures. Bd. Exs. 3-37. A comparison by the Board indicates that over the period, the Post reported a total of \$290,671 in lawful purpose expenditures on its gambling tax returns while over the same period only \$131,725 of expenditures were recorded in the meeting minutes as being approved by the membership. Board's post-hearing brief, Table A, Bd. Exs. 3-74. In addition, during the same period the Post reported \$401,854 in allowable expenses and \$83,155 in taxes as having been paid. The total of the lawful purpose expenditures, allowable expenses and taxes reported for the three-year period were \$775,680. Again, the total approved by the membership amounted to \$131,725.

63. The 1989 Gambling Manager's Manual points out in several places the importance of the full membership approving the expenditures of all funds generated by the conduct of lawful gambling. Bd. Ex. 161 at 7, 19 and 27. At the time of the November 12, 1992 post-compliance review, it was found that the Post was still making lawful gambling expenditures without any approval being recorded in the minutes and making Schedule D expenditures (Board-authorized expenditures) without obtaining membership approval. Bd. Ex. 165 at 2.

64. Prior to May 1992, gambling tax returns, Schedules C and D and expense computation forms were not made available to Post members at monthly meetings and were not attached to the minutes of the regular meetings. On some occasions, a gambling report would not be given monthly when Shock was not present. When a gambling report was given, Shock might hand out documents such as the income statement and balance sheet attached to the May 12, 1992 minutes, Bd. Ex. 30, that had been prepared by the accountant. T. 5232-23. The income statement and balance sheet prepared by the accountant did not contain all of the information that would be shown by the gambling tax returns and required schedules. In May 1992, Shock started attaching copies of the entire gambling report to the minutes and the entire gambling report was passed out to members present at the monthly meetings. T. 522. However, copies of the reconciled bank statements, inventories of all games and Schedules D and F have not been regularly included in the report to members or attached to the minutes. Bd. Exs. 30-37.

65. The Post did not place a copy of the compliance review report they received in June 1992 in the minutes of its July 1992 meeting or any

subsequent meeting in 1992. Bd. Exs. 32-37. The minutes of the July 14, 1992 meeting, Bd. Ex. 32, state that Merty Hirt gave the gambling report, but that Shock was present and, in fact, led a discussion on changes in the gambling flow chart, administrative duties and compensation. Shock kept the compliance review report in his office at the Post Home, but recalls only one Post member coming to his office and asking to look at it. T. 517-18.

66. The Post's annual audit for the year ending December 31, 1991, was filed with Revenue on July 1, 1992. Bd. Ex. 86. The audit report was never placed or mentioned in any of the Post's meeting minutes for 1992. Bd. Exs. 26-37.

Failure to Maintain Complete and Accurate Written System of Internal Controls

67. Paragraph 14 of the Amended Statement of Charges alleges that from June 1, 1991 through November 12, 1992, the Post failed to maintain and have available for review a complete and accurate written system of internal controls in violation of Minn. R. 7861.0120, subp. 1 (Supp. 1992), and Minn. R. 7860.0150 (1991).

68. The Board provides a form entitled Gaming Operations - Internal Controls- for use by organizations to file as their "written system of internal controls." The form lists several actions and responsibilities under the titles of Inventory Acquisition and Control, Gaming Operations Control, Fund Control and Record, Accounting-Monthly Reports and Administrative Controls. Next to each required action or responsibility is a blank space in which the name and title of the person responsible for that action is filled in. The Post filed completed internal controls forms, along with a copy of its chain of command, in April 1990, Bd. Ex. 113, May 1990, Bd. Ex. 114, February 1991, Bd. Ex. 115, and June 1993, Bd. Ex. 116. There are a number of inaccuracies in the forms and a number of failures to update the forms when responsible persons changed. For example:

- a. Internal controls were not changed to reflect the change in Post commander in June 1991.
- b. Jane Backstrom became the gambling secretary in November 1991, but the internal controls form submitted in February 1991, listing Lynda LaBarge as gambling secretary, Bd. Ex. 115, was not changed until June 1993, Bd. Ex. 116.
- c. The Post formed a gambling committee as of January 1992, but no mention is made of that committee in any of the internal control forms or attached chain of command charts.
- d. The February 1991 internal controls, Bd. Ex. 115, state that the persons responsible for preparing monthly tax returns for each site and a combined tax return for all locations are "CPA and Lynda LaBarge." Since October 1991, the Post gambling tax returns were prepared by Pusateri who was neither a CPA nor a Licensed Public Accountant.

- e. All the internal controls forms list John Shock as the person who prepares and presents the list of proposed allowable expenses and lawful purpose expenditures to the members for authorization and prepares the Schedules C and D for the monthly tax report. Bd. Exs. 113-116. Since early 1986, the gambling secretary has prepared the Schedules C and D.

Numerous other inaccuracies exist as set forth in the Board's post-hearing brief at 5-7. Even the June 1993 internal controls, Bd. Ex. 116, continue to list Shock as the person who prepares the Schedules C and D. It also lists the accountants as Pusateri and Hirt at Comprehensive Business Service. However, Hirt does not work for Comprehensive Business Service; he shares office space with Pusateri and runs an investment, financial consulting and brokerage firm. Pusateri has no employees other than himself at Comprehensive Business Service. T. 775.

Failure to Maintain Complete and Accurate Accounting Records

69. Paragraph 15 of the Amended Statement of Charges alleges that the Post failed to maintain complete and accurate accounting records in violation of Minn. R. 7861.0120, subp. 3A (Supp. 1992), and Minn. R. 7860.0120, subp. 1 (1991).

70. The record contains many instances where the Post failed to generate complete and accurate accounting reports or preserve records that it had or should have had. During the compliance review, the lawful gambling specialist found that the Post didn't have bingo records available for November 1991 or an invoice listing a certain pull-tab game, Bd. Ex. 164 at 10; did not have documentation to support some of the entries on its August through December 1991 gambling tax returns, Bd. Ex. 164 at 12; did not have receipts or invoices to support eleven expenditures made from June through December 1991, Bd. Ex. 164 at 23; failed to retain one voided check, Bd. Ex. 164 at 31-32; combined deposit records for each pull-tab deal, making it impossible to determine the net receipts for each game, Bd. Ex. 164 at 36-37; and failed to keep adequate bingo deposit records to separately identify deposits for each bingo occasion, Bd. Ex. 164 at 43-44 (it is noted that the Board inaccurately cited this deficiency as appearing on pages 93-94 of Bd. Ex. 164). At the post-compliance review on November 12, 1992, it was found that receipts or invoices were not available to support two checks that had been written for expenses; one to the Postmaster for \$58 for stamps and one to Hilde Office Supply for \$200 for supplies. In the check registers maintained by the Post, cleared checks or voided checks are taped back into the check register. T. 581. Three such cleared checks are missing from the fishing contest account check register for checks number 1147, 1148 and 1149 written in May 1990. Bd. Exs. 192 and 193, T. 550.

71. The Board suggests that the Post's records regarding the March 25, 1991 bingo occasion at the Marble site do not indicate that the \$345 in net receipts from that occasion were reported and spent for lawful purpose or allowable expenses. VFW Ex. 26; Bd. Exs. 52 and 53; T. 830-835 and 858-60. The documents show that the March 31, 1991 bingo occasion at the Marble site, produced \$505 in net proceeds, which was deposited in the Marble account on April 4, 1991, and reported on the April 1991 gambling tax return. The

documents show that the March 25, 1991 bingo occasion produced net proceeds of \$345 that was deposited in the Marble account on April 1, 1991, and that that amount was not reported on the April 1991 gambling tax return. It is possible that it was reported on the March 1991 gambling tax return, but that seems very unlikely. The documents in VFW Ex. 31 show that from March 3 through March 18, 1991, there were six bingo occasions in Marble from which the gross profit was \$2,004. After deducting the \$20 per bingo worker cash payments that were made for a total of \$260, the total deposits were \$1,744, which matches the deposit shown on the March bank statement. The Schedule A for the Marble site for March 1991 reports bingo proceeds of \$1,779. Bd. Ex. 52. That is already \$225 less than the \$2,004 in gross proceeds shown on VFW Ex. 26 and, if the March 25 bingo occasion gross profit of \$405 is included, \$630 less than the actual net receipts.

72. The Post failed to retain the prize receipts, winning redeemed tickets, unsold tickets and the flare for two pull-tab games reported on its Schedule B-2 for the month of November 1991 and reported the receipts from two pull-tab games twice on its Schedule Band B-2 reports for October and November 1991. Bd. Exs. 59 and 60. Those discrepancies were discovered by Backstrom while searching for the prize receipts forms for the pull-tab games played at the Post Home in October 1991. T. 818-820.

Bingo Violations

73. Paragraph 16 of the Amended Statement of Charges alleges that from September 1, 1991 through September 1992, the Post failed to keep required records of each bingo occasion it conducted in violation of Minn. Stat. § 349.19, subd. 1 (1992), Minn. R. 7861.0070, subp. 7 (Supp. 1992), and Minn. R. 7860.0230, subp. 8 (1991).

74. Paragraph 17 of the Amended Statement of Charges alleges that from October 1, 1991 through September 1992, the Post failed to have "checkers" record the required information for each bingo occasion conducted in violation of Minn. Stat. § 349.17, subd. 4 (1992).

75. Paragraph 18 of the Amended Statement of Charges alleges that from October 1, 1991 through September 1992, the Post awarded cover-all prizes that in aggregate exceeded \$500 per bingo occasion in violation of Minn. Stat. § 349.211, subd. 1 (1992).

76. Paragraph 19 of the Amended Statement of Charges alleges that from October 1, 1991 through September 1992, the Post failed to complete prize receipt forms for bingo prizes of \$100 or more in violation of Minn. R. 7861.0070, subp. 5G (Supp. 1992), and Minn. R. 7860.0230, subp. 8G (1991).

77. In its supplemental response to the Board's First Request for Admissions, the Post admits that for bingo occasions conducted from September 1, 1991 through September 1992, it failed to keep all the records required under the provisions of Minn. Stat. § 349.19, subd. 1 (1992), Minn. R. 7860.0230, subp. 8 (1991) and Minn. R. 7861.0070, subp. 7 (1992). Bd. Ex. 1 at 16-17. In the compliance review report, it was noted that the Post's bingo records for September, November and December of 1991 did not contain a copy of the schedule of games and their prizes and then restated the requirements of

Minn. Stat. § 349.19, subd. 1, and Minn. R. 7860.0230, subp. 8 (1991). Bd. Ex. 164 at 40-41. At the time of the Post-Compliance Review on November 12, 1992, it was found that the Post's bingo records for September 1992 still did not contain a copy of the schedule of games and their prizes and also did not include the number and price of sheets sold by type and the prize receipt forms for wins of \$100 or more. Bd. Ex. 165 at 8.

78. At the time of the compliance review in February 1992, it was found that the Post's bingo records indicated that the Post was not properly using a checker recording sheet. For example, of the sheets for 17 bingo occasions during October and December 1991, only two occasions had winning card serial numbers recorded and on those two occasions only the numbers for the second bingo winning cards were recorded. It was also found that the Post recorded the total amount of prizes per sheet rather than for individual bingos and that it did not record the number and price of cards sold by type. Bd. Ex. 164 at 42-43. The Post's internal controls form for the period listed the Post's Bingo Manager, David Wauzynski, as a person responsible for filling out the report forms for each bingo occasion. Bd. Ex. 115. At the time, however, Shock was filling out or at least signing the "checker gross receipts bingo summary" forms. Bd. Ex. 186. At the time of the Post-Compliance Review on November 12, 1992, the bingo records for September 1992 showed that the Post still wasn't properly using the checker recording sheet by still not including the winning card serial numbers, still recording the total amount of prizes per sheet, not the prize per individual bingos, and that for its new gambling site at the Taconite American Legion Hall, the checker sheets did not include the winning card serial numbers. Bd. Ex. 165 at 9, T. 439-441.

79. The Post admits that from October 1, 1991 through September 1992, it violated the provisions of Minn. Stat. § 349.211, subd. 1 (1992), by awarding cover-all prizes which in aggregate exceeded \$500 per bingo occasion. Bd. Ex. 1 at 17. During the compliance review, it was noted that the October and December 1991 bingo records indicated that the Post was improperly proceeding with its cover-all games. At the time, it had three cover-all games per occasion for which the prizes were calculated as a percentage of the total sales which resulted on several occasions in the total prizes for the three cover-all games played exceeding \$500. Eight occasions were noted that occurred during October and December of 1991 in which the total cover-all prizes awarded ranged from \$510 to \$810. Bd. Ex. 164 at 45-46. At the time of the post-compliance review, it was found that the Post was still playing the three cover-all games with prizes calculated as a percentage of sales and that the potential for the total cover-all prizes to exceed \$500 per occasion still existed. Bd. Ex. 165 at 10.

80. The Post admits that from October 1, 1991 through September 1992, it violated the provisions of Minn. R. 7860.0230, subp. 8G (1991) and Minn. R. 7861.0070, subp. 5Q (Supp. 1992), by not always completing a prize receipt form for bingo prizes of \$100 or more that it awarded. Bd. Ex. 1 at 17. At the compliance review, it was noted that the October and December 1991 bingo records showed that the Post was not using prize receipt forms but, rather, had the winner sign a "prize payout sheet" on wins of \$50 or more which also indicated the serial number of the winning card. At the time of the post-compliance review, it was found that the organization still was not using prize receipt forms for bingo wins of \$100 or more. Bd. Ex. 165 at 10.

Failure to Post Pull-Tab Rules

81. Paragraph 20 of the Amended Statement of Charges alleges that from February 1, 1992 through November 12, 1992, the Post failed to post house rules governing its sales of pull-tabs in violation of Minn. R. 7861.0080, subp. 2H (Supp. 1992), and Minn. R. 7860.0240, subp. 1F (1991).

82. The Post admits that from February 1, 1992 through November 12, 1992, it violated Minn. R. 7860.0240, subp. 1F (1991), and Minn. R. 7861.0070, subp. 2H (Supp. 1992), by not always having house rules governing its sale of pull-tabs posted in such a manner that players had access to the house rules before buying any pull-tabs. Bd. Ex. 1 at 17. Normally, the pull-tabs sold in the Post Home in Hibbing were sold from a booth located in a corner of the bar area at the front of the building. The house rules for pull-tabs were posted on the wall behind the booth. When bingo occasions were conducted, the entire pull-tab booth, which was on wheels, was moved into the separate room in which bingo was conducted, apparently just inside the door. There was no separate set of house rules for pull-tabs posted near the booth in the room used for bingo. T. 489-90 and 506. On the compliance review report, this situation was cited as the improper posting of the house rules. Bd. Ex. 164 at 47. At the time of the post-compliance review on November 12, 1992, the Post still didn't have its house rules for pull-tabs posted in the bingo hall at the point of purchase and at that time did not even have the house rules for pull-tabs posted at the pull-tab booth in the bar area of the building. Bd. Ex. 165 at 11.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

Authority

1. The Board and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 349.151, subd. 4(a)(12) and 14.50.

2. The burden is upon the Board to prove the facts at issue in this matter by a preponderance of the evidence. Minn. R. 1400.7300, subp. 5.

3. Minn. Stat. § 349.151, subd. 4(a)(12) (1992) states that the Board has the power and duty to suspend or revoke lawful gambling licenses of organizations as provided in Minn. Stat. Ch. 349. Minn. Stat. § 349.16, subd. 3 (1992) provides:

Licenses issued under this section are valid for two years and may be suspended by the board for a violation of law or board rule or revoked for what the board determines to be a willful violation of law or board rule. A revocation or suspension is a contested case under sections 14.57 to 14.69 of the administrative procedure act.

4. Minn. R. 7865.0020, subp. 1A (Supp. 1992), and Minn. R. 7860.0600, subp. 1 (1991), each provide that the Board may suspend an organization's lawful gambling license after a contested case hearing if the organization has

violated any law or Board rule or made a false statement in a document required to be submitted to the Board or Revenue. Minn. R. 7865.0020, subp. 4 (Supp. 1992) and Minn. R. 7860.0060, subp. 2 (1991), each further provide that any grounds for denial of a lawful gambling license are also grounds for suspension of the license.

5. Minn. R. 7865.0020, subp. 3 (Supp. 1992), provides that the Board may revoke the lawful gambling license of an organization after a contested case hearing for what the Board determines to be a willful violation of laws or rules related to lawful gambling.

6. Minn. Stat. § 349.151, subd. 4(a)(9) (1992), Minn. R. 7865.0030, subp. 1 (Supp. 1992), and Minn. R. 7860.0700, subp. 1 (1991), authorize the Board to impose civil penalties of up to \$500 per violation on licensed lawful gambling organizations for violation of or failure to comply with any provision of Minn. Stat. § 349.12 to 349.23 or the Board's rules.

Gambling After Expiration of Site Licenses

7. Minn. Stat. § 349.16, subd. 1 (1990) allows an organization to conduct lawful gambling if it has a license to conduct lawful gambling and complied with Chapter 349. Minn. Stat. § 349.2127, subd. 2(b) (1990) provides:

A person, other than a licensed distributor or an organization licensed or exempt or excluded from licensing under this chapter, is guilty of a crime who sells, offers to sell, or possesses gambling equipment. A violation of this paragraph is a gross misdemeanor if it involves ten or fewer pull-tab or tipboard deals. A violation of this paragraph is a felony if it involves more than ten pull-tab or tipboard deals, or a combination of more than ten deals of pull-tabs and tipboards.

Minn. Stat. § 349.12, subd. 18 (1990) defines "gambling equipment" as "bingo cards or sheets, devices for selecting bingo numbers, pull-tabs, jar tickets, paddle wheels and tipboards." Minn. Stat. § 349.12, subd. 9 (1990) defines "deal" as "each separate package, or series of packages, consisting of one game of pull-tabs or tipboards with the same serial number." Minn. Stat. § 349.2171, subd. 3(a) (1990) provides that a person who engages in the business of selling pull-tabs or tipboards in Minnesota without the licenses or permits required under Chapter 349 is guilty of a gross misdemeanor.

8. The Post's action of continuing to conduct lawful gambling at the Chisholm site after its site license expired May 31, 1990, and until it received its renewed site license effective August 1, 1990, was the conduct of lawful gambling without a license in violation of Minn. Stat. § 349.16, subd. 1 (1990).

9. The Post's action of continuing to conduct lawful gambling at the Chisholm site during the lapse in its site license did not constitute a violation of Minn. Stat. § 349.2127, subd. 2(b). That provision applies to the sale of gambling equipment, not individual pull-tabs. Moreover, the Post was, at the time, "an organization licensed ...under this chapter" Therefore, the statute did not apply to it.

10. The Post's action in continuing to conduct lawful gambling at the Chisholm site during the lapse in its site license was engaging in the business of selling pull-tabs without the licenses or permits required in violation of Minn. Stat. § 349.2171, subd. 3(a).

11. The foregoing violation of Minn. Stat. §§ 349.16, subd. 1, and 349.2171, subd. 3(a) (1990), was willful within the meaning of Minn. Stat. § 349.16, subd. 3(3) (1992), and Minn. R. 7865.0020, subp. 3 (Supp. 1992). The Post, and in particular its gambling manager, Shock, knew that the license expired May 31, 1990. Every business operating under a license knows the expiration date of its license. In this case, Shock obviously knew it was about to expire when he submitted the renewal application. He also knew that when the license expired, lawful gambling could not be conducted until the new license was made effective. But he was late in submitting his renewal and apparently hoped he could get by with continuing the operation until the new license came. It appears that Shock and the Post did not receive the June 8, 1990 form letter from the Board specifically notifying it that because its license had expired at Chisholm it could no longer conduct lawful gambling there. Bd. Ex. 133. Nonetheless, while the Post did not ignore a specific written notice that it could no longer conduct lawful gambling at Chisholm, it chose to ignore the law that requires a license to conduct lawful gambling. The statute is clear and the concept is understood by everyone that is licensed, including the Post and Shock.

12. Since the Post did not conduct lawful gambling at the Marble site after March 31, 1991, it did not conduct lawful gambling without a license and did not violate Minn. Stat. §§ 349.16, subd. 1, 349.2127, subd. 2(b), or 349.2171, subd. 3(a) (1990).

13. The Post's action in conducting lawful gambling at its Hibbing site after expiration of the site license on September 30, 1991, and until October 24, 1991, constitutes the conduct of lawful gambling without a license in violation of Minn. Stat. §§ 349.16, subd. 1, and 349.2171, subd. 3(a) (1990). However, such conduct is not the sale or possession of gambling equipment in violation of Minn. Stat. § 349.2127, subd. 2(b).

14. The Post's action in conducting lawful gambling without a license at the Hibbing site in October 1991, was a willful violation within the meaning of Minn. Stat. § 349.16, subd. 3 (1992), and Minn. R. 7865.0020, subd. 3 (Supp. 1992). Again, the Post, and in particular its gambling manager, were well aware that the existing site license expired September 30, 1991. While they had submitted the renewal applications more than three months prior to that date, they knew that they had not received the new licenses and premises permit. They had no reason to believe or expect that they could legally continue to conduct gambling pending receipt of the new licenses and permit.

Failure to Reconcile Profit Carryover Variance

15. Minn. Stat. § 349.19, subd. 5 (1992) provides, in relevant part:

A licensed organization must report to the board and to its membership monthly, . . . on its gross receipts, expenses, profits, and expenditure of profits from lawful gambling. The

report must include a reconciliation of the organization's profit carryover and its cash balance on hand.

The provision requiring the reconciliation of profit carryover to the cash balance was added in 1991 and made effective March 1, 1992. Minn. Laws 1991, Ch. 336, Art. 2, §§ 29 and 54(f).

From 1985 to 1992, Minn. R. 7860.0150, subp. 2D, required that each organization have a written system of internal accounting and administrative controls and, specifically, that the accounting controls be designed with the objective "that the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to differences." In the 1992 revision to the rules, that provision was modified somewhat to require the accounting controls to meet the objective "that the recorded gambling funds and equipment are monitored on an on-going basis and discrepancies are resolved." Minn. R. 7861.0120, subp. 1B(4) (Supp. 1992).

16. Since October 1, 1989, Minn. Stat. § 349.19, subd. 6, has required licensed organizations to maintain required records for 3 1/2 years and to allow inspection by appropriate authorities, including the Board. Minn. Laws 1989, 1st Spec. Sess. Ch. 1, Art. 13, §§ 6 and 30. Prior to that, the statute provided that the Board could require that records be preserved for at least two years. Minn. Stat. § 349.19, subd. 6 (1986).

17. The Post developed a profit carryover variance during the months from September 1985 through May 1988. Teasick partially reconciled that variance as of June 1988 to be \$219,409. From then through November 1991, the variance did not change significantly. From December 1991 through February 1992, the variance increased by some \$8,000. In March 1992, Pusateri submitted the report making the adjustment that reduced the profit carryover variance to zero. From then until November 1993, the profit carryover variance fluctuated somewhat erratically and as of November 1993, stood at \$30,504. Thus, there are two profit carryover variances in the facts of this matter: The one that developed up through June 1988 (1988 PCOV) and the profit carryover variance that developed after November 1991 (the subsequent PCOV). The focus of this proceeding is the 1988 PCOV. The subsequent PCOV was not addressed in the allegations in the Amended Statement of Charges and Amendments recently filed by the Post may resolve it.

18. Minn. Stat. § 349.15 has long provided that profits from lawful gambling may be expended only for lawful purposes or expenses as authorized at a regular meeting of the conducting organization. Prior to 1988, "lawful purpose" was defined to include the improving, expanding, maintaining or repairing of real property owned or leased by the organization, but not the erection or acquisition of real property unless specifically authorized by the Board. Minn. Stat. § 349.12, subd. 11 (1984). The definition was amended effective April 22, 1988, to also require Board approval of improvement, expansion, repair or maintenance of real property. Minn. Laws 1988, Ch. 596, §§ 1 and 7.

19. It is clear that the 1988 PCOV was the result of Shock failing to report all the expenditures that were made from the gambling accounts up through May 1988. It is not at all clear what those unreported expenditures

were for, except that most of the \$219,409 as of June 1988 was not for the acquisition and improvement of the new Post Home. Those expenditures did not begin until mid-1987. By the end of June 1987, the cumulative variance between reported expenditures and bank account debits was \$102,478.82. Bd. Ex. 266. It is possible, as Shock suggested on a couple of occasions, that the 1988 PCOV was due in large part to unreported expenses. For example, the gambling reports before April 1988 do not list any compensation as an expense and did not list any payments for building or equipment maintenance or repair as a lawful purpose expenditure. After that date, compensation is listed in significant amounts of \$4,000 to \$7,000. It is just as possible that the money was going in somebody's pocket. At any rate, Pusateri's assertion that most of the 1988 PCOV was due to unreported expenses associate with the acquisition and improvement of the new Post Home is incorrect.

20. The March 1992 adjustment made to zero out the profit carryover variance by reporting extra Board-approved expenditures of \$228,899 was not a reconciliation of the organization's profit carryover to its cash balance on hand because it failed to adequately explain the reasons for the adjustment and was based upon an inaccurate assumption that the profit carryover variance was largely due to not including Board-approved expenditures on prior gambling tax returns.

21. The failure of the Post to reconcile the 1988 PCOV does not constitute a violation of Minn. Stat. § 349.19, subd. 5 (1992), because that statute was not in effect until March 1, 1992. All the actions that created the 1988 PCOV, the expenditure of gambling funds that were not reported on the gambling tax returns, occurred on or prior to June 1988. After that, the variance was simply "carried over" report to report. Applying Minn. Stat. § 349.19, subd. 5, to the 1988 PCOV would be a retroactive application of the statute. Since this statute does not expressly state that it is to be applied retroactively, it cannot be.

2 Even after June of 1988, it is difficult to determine how much the Post expended toward the new Post Home because the Post has reported both mortgage payments and payments to subcontractors and material providers. In the typical construction financing situation, the subcontractors and material providers would be paid out of the loan proceeds. Thus, indicating both payments to the subcontractors and material providers and loan payments may, in essence, be reporting some of the expenses twice. Moreover, since the Board actually approved use of gambling funds for mortgage loan payments on 60 percent of the original loan of \$150,000 and 100 percent of the additional \$50,000, it could be said that the Board did not approve direct payments out of gambling accounts to subcontractors and material providers. Based on the figures in evidence, the approved loan payments would have been about \$2,990 commencing in about November 1987 and approximately \$2,059 commencing in April 1988 for nine years. In any event, it appears that the Post has already claimed amounts equalling or exceeding what the Board approved or will do so shortly.

22. The Post's failure to reconcile the 1988 PCOV did not constitute a violation of Minn. R. 7860.0150, subp. 20 or its successor, Minn. R. 7861.0120, subp. 1B(4) (Supp. 1992). Those rules require that an organization have written accounting controls designed with the objective of comparing recorded assets to actual assets and taking appropriate action with respect to differences. Since the Post adopted the Board's form Internal Controls, they had such a control. All that can be implied from this rule is that it is a good idea to determine the existence of variances and do something about them. But it was not a specific and enforceable requirement to reconcile profit carryover variances. No such requirement existed until Minn. Stat. § 349.19, subd. 5 (1992), became effective March 1, 1992. Similarly, the newsletters and vague directions given by the Board to inquiries from the Post regarding its profit carryover variance do not constitute specific enforceable requirements to reconcile the profit carryover variance.

23. The Post argues that any determination of a violation is barred by "the Minnesota Department of Revenue's internal statute of limitations." Revenue has adopted a position that it cannot require organizations to go back further than 3 1/2 years to reconcile profit carryover variances. T. 390. In its post-hearing reply, the Board argues that the Revenue statute of limitations is contained in the tax collection provisions of the lawful gambling statutes, namely Minn. Stat. § 349.216 (1992). That provision limits the time in which the amount of taxes can be assessed to 3 1/2 years after the return is filed. It argues that there is no statute of limitations, let alone one restricting the Board, with respect to the reconciliation requirement in Minn. Stat. § 349.19. But, in fact, Minn. Stat. § 349.19, subd. 6, requires organizations to keep records for 3-1/2 years for inspection by Revenue, the Board or the Commissioner of Public Safety. The 3-1/2 year limit expressly applies to the Board. The statute states that the records required to be kept by Minn. Stat. § 349.19, subd. 9a, include records of assets and lawful purpose expenditures; that means that the limitation applies to records regarding profit carryover variances. Thus, even if the new requirement of Minn. Stat. § 349.19, subd. 5, for reconciliation of profit carryover variances applies retroactively, it is subject to the 3-1/2 year statute of limitations. In this case, that would be measured from the February 1992 compliance review and matters prior to August 1988 would be outside the statute. Moreover, it is Revenue that has the authority to approve profit carryover variances and to approve adjustments. For that reason also, the 3-1/2 year statute of limitations is applicable here. The real violation here was the expenditure of gambling funds for purposes that were not allowable expenses or lawful purpose expenditure because the expenditures were never approved by the Post membership. But that violation was not alleged and is clearly barred by the 3-1/2 year statute. The reconciliation statute cannot be used to circumvent the statute of limitations.

24. Even if the Post's failure to reconcile the 1988 PCOV constituted a violation of Minn. Stat. § 349.19, subd. 5 (1992), and Minn. R. 7860.0150, subp. 20, such violation was not willful. At the time the variance was developing, Shock, or the gambling secretary under Shock's supervision, was preparing the Schedules Band C and the gambling tax returns. They were not reporting some of the expenditures of gambling account, but could not figure out what was being done wrong. Shock received a letter from the Board congratulating him facetiously for 100 percent accuracy in his reports. He called the Board, but was simply told to report all expenses and it should work out. Correctly completing the reports was simply beyond Shock's accounting abilities. Two and one-half years later, the Post finally hired an

accountant and within a few months the monthly variances disappeared. The accountant told Shock that it would either be necessary to reconstruct all the reports back to 1985 or make a one-time adjustment. Shock went to talk to the Executive Director of the Board to find out what to do and was told to have the accountant call the Board. Until March 1992, no specific action was taken to attempt to accurately determine the reasons for the profit carryover variance and make the corrections necessary to eliminate it or determine if any or all of the unreported expenditures had been for other than lawful purposes or legal expenses and had to be reimbursed to the gambling account. But, prior to March 1992, there was no specific enforceable requirement to do so. Thus, there was no violation, let alone a willful violation. And, moreover, Shock did in fact attempt to understand the reason for the profit carryover variance and attempt to find out how to resolve it.

Filing of False Reports

25. Minn. R. 7860.0120, subp. 3 (1991) requires that every organization file monthly reports with the Board, or quarterly in the case of organizations with not more than \$1,000 in gross receipts in a quarter, and that the report be filed at the same time and as a part of the organization monthly tax return. The information required is that described in subp. 2 of the rule, which includes gross receipts, costs of prizes paid out, details of all expenses, details on how the profit was used or dispersed and details of purchases of gambling equipment. Minn. R. 7860.0600, subp. 1B (1991) provides that the Board may suspend or revoke an organization's license after a contested case hearing if the license holder made a false statement in a document or application required to be submitted to the Board or the Department of Revenue or made a false statement in a sworn statement or testimony before the Board.

26. Minn. Stat. § 349.19, subd. 5 (1992) requires, in relevant part, that the licensed organization report each month to the Board and its membership on its gross receipts, expenses, profits, and expenditures of profits from lawful gambling. Minn. R. 7861.0120, subp. 3D (1992) states:

D. The following tax return and schedules must be filed monthly with the Department of Revenue on forms prescribed by the commissioner of revenue:

(1) monthly lawful gambling activity summary and tax return (from G-1);

(a) The unpaid liabilities of the licensee on allowable expenses shall be reported to the commissioner of revenue on its monthly gambling tax return.

(b) The gambling manager and the chief executive officer of the organization, or their respective designees, and the person who completed the tax return must sign the tax return. The organization shall inform the commissioner of revenue in writing of the identity of the designees.

- (2) summary of receipts and expenses per site (schedule A);
- (3) summary of games played and receipts per game (schedule B);
- (4) combined receipts tax schedule (schedule E).

Minn. R. 7865.0020, subp. 1B (Supp. 1992) provides that the Board may suspend any gambling license after a contested case hearing if the Post has made a false statement in a document or application required to be submitted to the Board or the Department of Revenue or has made certain other false statements.

27. The statement of Board-approved expenditures in the amount of \$228,899 on the March 1992 gambling tax return originally filed by the Post and as amended, Bd. Exs. 64 and 65, was a false statement in a document required to be submitted to the Department of Revenue. Likewise, the statement on line 2 of Schedule D listing Board-approved expenditures for March 1992, including the amount of \$2,259.99 for building repairs in 1987 (and which was apparently intended to actually report \$225,999), Bd. Ex. 101, was a false statement in a document required to be submitted by the Board. Of the \$228,899, \$2,900, as reported on line 1 of the Schedule D, was a legitimate Board-approved expenditure. The remainder, \$225,999, was simply the amount determined by the Post accountant to be necessary to zero out the profit carryover variance. At the time, the accountant and the Post had no reasonable basis for including that \$225,999 as a Board-approved expenditure. They had only the accountant's knowledge that the profit carryover variance was approximately that much at that point in time and Shock's knowledge that approximately \$200,000 of profit carryover variance had developed by early 1988. As found above, the Board-approved expenditures were incurred beginning in late 1987 and so contributed a relatively small portion, certainly less than \$50,000, to the Board-approved expenditures for acquisition and improvement of the new Post Home. It is conceivable that some of the remaining profit carryover variance related to repairs and improvements to the old Post Home, but prior to 1988, such expenditures did not require Board approval.

28. The Post argues that there was not a false amount reported on the March 1992 tax return and offers the accountant's testimony that as of the date of the hearing, the tax returns submitted represented a fair and accurate position of the Post as he knew it. The accountant, Pusateri, has belatedly done some work to justify the amount reported. But all that he can determine is what has been found above, that from 1985 to June 1988, the Post made expenditures of gambling funds that were not reported on the gambling tax returns. But Pusateri is too ready to justify the Post's returns for questionable reasons. For example, he blames the prior accountants for improperly capitalizing capital improvements that should have been expensed on the gambling tax returns when the gambling tax returns show no evidence of that and, in fact, show that soon after the prior accountants became involved in early 1988, the profit variances disappeared, although the carryover continued. T. 725. He suggests that there are no inappropriate expenditures simply because everything went through the bank. Most importantly, he was willing to suggest zeroing out the profit carryover variance without making even minimal inquiries to determine the actual amount of the variance and the basis for it.

29. The Post's failure to report the gross and net receipts and prizes paid for the raffles conducted in conjunction with the fishing contests in 1990 and 1991 constitutes the filing of false reports in that the Post omitted information required to be reported under Minn. R. 7860.0120, subp. 3 (1991), from at least its February 1990 and February 1991 gambling tax reports. The Post had no justifiable reason for treating the entire contest as a fund raiser not involving charitable gambling. The only justification given at the hearing was that Shock heard from the Post quartermaster that the Post's accountant had told him that the accountant had called the state and had been informed that the fishing contest was not charitable gambling. Again, Teasick's version of the evidence would have been helpful. Assuming there was such a telephone conference, it is obvious that the Board would have advised the accountant that the fishing contest and the raffle must be treated as separate events and that the fishing contest was a fund raiser "on the Post side" and the raffle was lawful gambling "On the gambling side". Shock's testimony was not that they were told that the raffle was "On the Post side". Again, Shock did not ask the necessary questions. He and the other Post officials obviously knew that raffles were a form of lawful gambling and subject to the statutes and rules controlling lawful gambling.

30. The Post's failure to report the interest income from the fishing contest account on any gambling tax returns also constitutes the filing of gambling tax returns containing false information in that the Post's gambling tax returns omitted receipts required to be reported. This information should have been included along with the other information regarding the ice fishing contest raffles.

Fishing Contests/Raffle Violations

31. Minn. R. 7860.0270, subps. 1-3 and 6 (1991) provide:

Subpart 1. Raffle tickets; limitations and requirements for use. Tickets for entry into a raffle must be sold or issued separately and each shall constitute a separate and equal chance to win with all other tickets sold or issued. No person may be required to obtain more than one ticket, or to pay for anything other than the ticket, in order to enter a raffle.

All tickets for use in any raffle shall have a stub or other detachable section, be consecutively numbered, and be accounted for separately through the use of a log book showing to whom the tickets were given to be sold. The ticket stub or other detachable section of the ticket must bear a duplicate number corresponding to the number on the ticket and shall contain the purchaser's name, complete address, and telephone number. Both parts must be imprinted with sequential numbers commencing with the number '1' through the maximum number of tickets to be sold.

Each raffle ticket must be sold for the same price as every other raffle ticket being used for that particular raffle.

No person may be required to be present at a raffle drawing in order to be eligible for the prize drawing.

In conducting a drawing in connection with any raffle, each ticket seller shall return to the organization the stubs or other detachable section of all tickets sold. The organization shall then place each stub or other detachable section of each ticket sold into a receptacle out of which the winning tickets are to be drawn. The receptacle must be designed so that each ticket placed therein has an equal opportunity with every other ticket to be the one withdrawn.

Subp. 2. Control of raffle prizes. An organization conducting a raffle in which real or personal property prizes are to be awarded shall have paid for in full or otherwise become the owner, without lien or interest of others, of all the real or personal property prior to the drawing at which the winners of the prizes are to be determined.

Subp. 3. Disclosure of prizes and rules. The following information must be printed upon each ticket sold:

- A. the date and time of drawing;
- B. the location of the drawing;
- C. the name of the organization conducting the raffle;
- D. the license number, if any;
- E. the price of the chance; and
- F. the prize or prizes to be awarded.

Subp. 6. Prizes must be awarded. All raffle prizes must be awarded on the date indicated on the raffle ticket unless a different date is approved by the board. The board shall extend the date for the drawing if:

- A. weather has caused a postponement of the event at which the drawing was to occur, or
- B. not enough tickets are sold to cover the cost of the prizes, and an extension will make a material difference. The fact that a desired level of profit will not be attained is not a basis for an extension of the date of the drawing.

32. Minn. R. 7860.0270, subp. 4 (1991) provides:

Subp. 4. Records. The organization shall maintain the following records or information with regard to individual raffles for a period of two years:

- A. the current amount of proceeds received from the raffle;
- B. all allowable expenses deducted from the net receipts of a raffle; and
- C. the winning ticket stubs.

33. Effective May 18, 1993, Minn. Stat. § 97C.081 was enacted regarding fishing contests and subjecting them to control by the Commissioner of the Department of Natural Resources. Regarding raffles conducted in conjunction with an ice fishing contest, Minn. Stat. § 97C.081, subd. 5 (1993) provides:

Subd. 5. Ice fishing contest in conjunction with raffle. An organization that is permitted under this section and licensed by the lawful gambling control board to conduct raffles may conduct a raffle in conjunction with an ice fishing contest. The organization may sell a combined ticket for a single price for the ice fishing contest and raffle, provided that the combined ticket states in at least 8-point type the amount of the price that applies to the ice fishing contest and the amount that applies to the raffle. All other provisions of sections 349.11 to 349.23 apply to the raffle.

34. In connection with the 1990 and 1991 fishing contest raffles, the Post's failure to pay for merchandise awarded as raffle prizes prior to the drawings, its failure to maintain a separate log book accounting for the sale and distribution of tickets for the 1990 event, its requirement that persons to be present for cash drawings and, in 1990; its failure to award all of the listed prizes constitute violations of Minn. R. 7860.0270, subps. 1-3 and 6 (1991).

35. The Post's failure in connection with the 1990 and 1991 fishing contest raffles to maintain separate records of the current amount of proceeds received from the raffle and a record of all allowable expenses being deducted from the net receipts constitutes a violation of Minn. R. 7860.0270, subp. 4 (1991).

36. The expenses associated with the conduct of the fishing contests in 1990 and 1991 do not constitute allowable expenses or lawful purposes expenditures. These expenses in the amount of \$42,695.18 relate to the conduct of the ice fishing contest and not the raffle. (It is possible that there were some expenses in connection with the raffle itself such as printing expenses, but they have not been identified in the record.)

The Post argues that it is impossible to separate the event into a fishing contest and a raffle and that the entire event should be treated as a whole with all of the receipts from the contest constituting receipts from the conduct of lawful gambling and any expenses necessary to putting on the contest being treated as allowable expenses. VFW's post-hearing brief at 48. That position must be rejected for the reasons cited by the Board in its post-hearing reply brief at 5. Lawful gambling consists of "bingo, raffles, paddle wheels, tip boards, and pull-tabs." Minn. Stat. § 349.12, subd. 24 (1992). A fishing contest simply does not fit within any of those forms of gambling. Moreover, as the Board points out, the Legislature confirmed long-standing provisions of law by enacting Minn. Stat. § 97C.081, subd. 5, in 1993. As quoted above, that provision allows an organization to conduct a raffle in conjunction with an ice fishing contest and to sell a combined ticket for a single price for the ice fishing contest and raffle if it states the amount of the price that applies to the ice fishing contest and the amount that applies

to the raffle. Thus, they are separate events and the expenses that relate to the conduct of the ice fishing contest cannot be claimed as allowable expenses or lawful purpose expenditures to be paid out of the proceeds of the raffle.

On the other hand, Minn. Stat. § 97C.081, subd. 5 (1993), confirms that in treating the ice fishing contest and associated raffles separately, it is appropriate to treat the receipts separately. Thus, if in this case, the Post is required to separate ice fishing contest prizes and expenses from the raffle prizes and expenses, it is appropriate that it be allowed to separate the ice fishing contest receipts from the raffle receipts. It is neither logical nor fair to require all the receipts from the tickets to be counted as raffle receipts. No allocation was made on the tickets sold and no evidence was presented in the hearing regarding an appropriate allocation. But clearly, any allocation would have been based upon the prizes to be given and the expenses expected to be incurred for the raffle and for the ice fishing contest. The ticket proceeds for the two years totalled \$178,858. As found above, the fishing contest expenses, including prizes for fish and miscellaneous prizes, amounted to \$42,695.18. The total prizes reported by Pusateri on the amended November 1993 gambling tax report were \$127,324.37. Deducting the prizes for catching fish and the miscellaneous prizes (Table B attached to Board's post-hearing brief) leaves \$113,151.67 in prizes that presumably were awarded on the raffle. It would be appropriate to allocate the major proportion of the gross receipts to the raffle, but allocating an amount equal to or greater than \$42,695.18 as fishing contest receipts would be appropriate.

37. The Post's expenditures for air conditioning equipment in excess of the amount of \$22,096 approved by the Board for that project, for real property and capital asset expenditures totalling \$886.69 that were not approved by the Board and for the miscellaneous expenditures totalling \$3,116.48 as described in the Amended Statement of Charges constituted the use of gross profits from lawful gambling for expenditures that did not constitute allowable expenses or lawful purposes in violation of Minn. Stat. § 349.15.

Failure to Report to Membership and Obtain Membership Approvals

38. Minn. Stat. § 349.19, subd. 3 (1992), requires that all expenditures of gross profits from lawful gambling must be itemized as to payee, purpose, amount and date of payment, and must be in compliance with Minn. Stat. § 349.154. It also requires that authorization of the expenditures must be recorded in the monthly minutes of the licensed organization.

39. As noted above, Minn. Stat. § 349.19, subd. 5 (1992) requires organizations to report to the Board and its membership monthly, unless it does not have more than \$1,000 in gross receipts per quarter, on its gross receipts, expenses, profits and expenditures of profits from lawful gambling, among other requirements. Minn. R. 7860.0120, subp. 2 (1991):

Subp. 2. Monthly records. Every organization licensed to operate any lawful gambling activity shall keep and maintain monthly records of all the gambling activities of the organization. A photocopy of the 'Minnesota Monthly Gambling Tax Return,' a photocopy of Schedule C, a copy of reconciled bank statements, and a photocopy of the expense computation form must be filed with the monthly report to the members by the licensed organization and made part of the minutes of the regular meetings of the licensed organization. These records must be kept separate for each month and include all details of the following:

- A. the gross receipts from each form of lawful gambling conducted;
- B. the cost of all prizes paid out for each form of lawful gambling conducted;
- C. full details on all expenses related to each form of lawful gambling conducted;
- D. records that clearly show in detail how the profit obtained by the organization from each gambling activity was used or disbursed by that organization; and
- E. records that detail purchases of gambling equipment as to the type, quantity, and unit cost, separated by distributor.

40. Minn. R. 7861.0120, subp. 3B <Supp. 1992) added some additional items required in the monthly report to organization members. It provides:

B. A monthly report must be made to the members of the organization. The monthly report must contain the following information:

- (1) the gross receipts from each form of lawful gambling conducted;
- (2) the cost of all prizes paid out for each form of lawful gambling conducted;
- (3) full details on all expenses related to each form of lawful gambling conducted;
- (4) records that show in detail how the profit from gambling activity was expended for lawful purpose;
- (5) detailed records of gambling equipment purchases, which include type, quantity, unit cost, and from whom purchased;
- (6) a physical inventory taken at the end of each month, which includes a list of all games, the registration stamp number, serial number, name of game, and cost for each game (any games in play are considered in inventory); and
- (7) a bank reconciliation done each month, which lists outstanding checks, deposits in transit, and beginning and ending book balances for the month which correspond to the profit carryover.

41. Minn. Stat. § 349.19, subd. 11 (1992) provides that copies of the annual audit required to be performed by an independent accountant and a copy of any audit or compliance report prepared by an agency of the state must be placed "in the minutes of the next meeting of the organization following the receipt of the report."

42. The Post's failure throughout 1990-1992 to obtain approval of the membership for all expenditures of gross profits from lawful gambling and to record such approval in the monthly minutes of the organization violate Minn. Stat. § 349.19, subd. 3. Not even all the lawful purpose contributions were submitted to the membership and virtually none of the Board-authorized expenditures, allowable expenses or gambling taxes were submitted to the membership for their review and approval.

43. The Post's failure from January 1, 1990 through April 1992 to provide its members at the monthly meetings with its entire monthly gambling tax return, Schedule C, reconciled bank statements and the expense computation form constitutes a violation of Minn. Stat. § 349.19, subd. 5, and Minn. R. 7860.0120, subp. 2. Its failure thereafter to consistently include reconciled bank statements, inventory of all games and Schedules D and F constitute a violation of Minn. R. 7861.0120, subp. 38 (Supp. 1992).

44. The Post's failure to place copies of the compliance review and the independent audit for the year ending December 31, 1991, in the minutes of the next meetings of the organization following receipt of the report, constitute violations of Minn. Stat. § 349.19, subd. 11.

Failure to Maintain Complete and Accurate Written System of Internal Controls

45. Minn. R. 7860.0150 (1991) required every organization to establish a written system of internal accounting and administrative controls relative to its lawful gambling operations for the purpose of adequately determining its liability for taxes and the proper determination of profit to be expended for lawful purposes. The rule required the system to address at least plans for ensuring security of the gambling fund and equipment, a plan for securing the funds from gambling and a plan for controlling the proceeds from gambling activities. Specifications were given for accounting control system objectives. An administrative control system required the organization to make changes in the system if required and to advise the Board of change within 10 days and allow the Board to determine whether the submitted internal control system was inadequate and to require the organization to remedy the inadequacy within 60 days. The 1992 revision of the rules incorporated most of the same items in Minn. R. 7861.0120, subp. 1 (Supp. 1992). The rules also require that any changes in the system of internal controls be filed with the Board ten days before they take effect.

46. From at least June 1, 1991 through November 12, 1992, the Post failed to maintain a complete and accurate written system of internal controls in violation of Minn. R. 7860.0150 (1991) and Minn. R. 7861.0120, subp. 1 (Supp. 1992). On many occasions and in many aspects, the internal controls inaccurately listed the person responsible for the specified activities, failed to specify the procedures the Post actually followed and listed actions and responsible persons for functions that were not actually performed.

Failure to Maintain Complete and Accurate Accounting Records

47. Minn. R. 7860.0120, subp. 1 (1991) required every organization to maintain complete, accurate and legible general accounting records sufficient to furnish information regarding all transactions pertaining to gambling and to adequately reflect gross receipts, prizes, net receipts, expenses, and all other accounting transactions. The same provisions were incorporated in Minn. R. 7861.0120, subp. 3A (Supp. 1992) with the addition of the word "monthly" so that the monthly accounting records must be sufficient to adequately reflect gross receipts, prizes, net receipts, expenses, and all other accounting transactions.

48. Some of the mistakes and missing records described in the Findings rise to the level of rendering parts of the accounting records insufficient to furnish information regarding all transactions pertaining to gambling and inadequate to reflect gross receipts, prizes, net receipts, expenses and all other accounting transactions and therefore constitute violations of Minn. R. 7860.0120, subp. 1 (1991) and Minn. R. 7861.0120, subp. 3A (Supp. 1992). These include the lack of documentation to support deposit amounts and reported expenses. Others do not rise to that level and amount to minor mistakes that are not violations. Such items include missing cleared checks and twice-reported pull-tab games.

Bingo Violations

49. At all times relevant here, Minn. Stat. § 349.19, subd. 1, has provided:

Subdivision 1. Required record of receipts. A licensed organization must keep a record of each occasion on which it conducts gambling, including each bingo occasion and each day on which other forms of lawful gambling are conducted. The record must include gross receipts, quantities of free plays if any, expenses, prizes, and gross profit. The board may by rule provide for the methods by which expenses are documented. In the case of bingo, gross receipts must be compared to the checkers' records for the occasion by a person who did not sell cards for the occasion. Separate records must be kept for bingo and all other forms of lawful gambling.

Minn. R. 7860.0230, subp. 8 (1991) requires that for each bingo occasion, records be kept of the number of players in attendance, the total amount wagered, the total prizes, cash and non-cash awarded, a copy of the schedule of games and their prizes, the number and price of cards sold, the inventory of disposable bingo cards purchased, and for any bingo game with a prize of \$100 or more, the name and address of the winner, the series number of the winning card and the date and amount of the prize won. Those same provisions were, for the most part, incorporated in the revised Rule at Minn. R. 7861.0070, subp. 7 (Supp. 1992). The revised rule requires that records be kept for three and one-half years and, with regard to prizes valued at \$100 or more, it requires a prize receipt as provided in subp. 5 item Q. That item

requires that a prize receipt be completed for prizes of \$100 or more which must include the winner's name, address, and drivers' license number or other identification, the series number of the winning card or sheet, the date and amount of the prize and the name of the gambling premises.

50. At all times relevant here, Minn. Stat. § 349.17, subd. 4 has required that one or more "checkers" must be engaged for each bingo occasion, that the checkers record the number of cards played in each game and the prizes awarded on a form that includes the registration number of each card and a checker's certification that the figures recorded are correct to the best of the checker's knowledge.

51. At all times relevant here, Minn. Stat. § 349.211, subd. 1 provided that prizes for a single bingo game could not exceed \$100 except for a cover-all game which may exceed \$100 if the aggregate value of all cover-all prizes in a bingo occasion does not exceed \$500.

52. Minn. R. 7860.0230, subp. 8G (1991) as noted above, requires that for any bingo game with a prize of \$100 or more that records be kept of the name and address of the winner, the series number of the winning card and the date and the amount of the prize won. Also, as noted above, the revised rule at Minn. R. 7861.0070, subp. 5Q requires a prize receipt form to be completed containing the same information plus the name of the gambling premise.

53. The Post's failure to maintain bingo occasion records that included a copy of the schedule of games and their prizes and the number and price of cards or sheets sold by type constitutes a violation of Minn. Stat. § 349.19, subd. 1, and Minn. R. 7860.0230, subp. 8 (1991), and Minn. R. 7861.0070, subp. 7 (Supp. 1992).

54. The Post's failure from October 1, 1991 through September 1992, to record the serial numbers of winning sheets constitutes a violation of Minn. Stat. § 349.17, subd. 4.

55. The Post's awarding of cover-all prizes which in aggregate exceeded \$500 per bingo occasion on several occasions from October 1, 1991 through September 1992, constitutes a violation of Minn. Stat. § 349.211, subd. 1.

56. The Post's failure from October 1, 1991 through September of 1992, to complete prize receipt forms for bingo prizes of \$100 or more constitutes a violation of Minn. R. 7860.0230, subp. 8G (1991) and Minn. R. 7861.0070, subp. 5Q.

Failure to Post Pull-Tab Rules

57. Minn. R. 7860.240, subp. 1F (1991) is one of the general rules applying to the game of pull-tabs and states, "house rules governing the conduct of the sale of pull-tabs must be posted in such a manner that players have access to the rules before buying any pull-tabs." The 1992 revision of the rule appearing at Minn. R. 7861.0080, subp. 2H (Supp. 1992) is identical.

58. The failure of the Post to have any house rules governing pull-tabs posted at the time of the Post-Compliance Review in November 1992, is clearly

a violation of the cited rules. It is not so clear that leaving the rules posted in their normal location while moving the pull-tab booth temporarily into a nearby room results in players not having access to the rules before buying any pull-tabs. But the Post has admitted it does constitute a violation and it is probably reasonable to interpret the rule as requiring that the rules be posted near the point of sale.

Summary

59. The Board has met its burden of proving that the Post violated the lawful gambling statutes and rules in the numerous ways set forth in the Conclusion. It has also proven that the violations regarding conduct of gambling after expiration of site licenses were willful violations of law and Board rule within the meaning of Minn. Stat. § 349.16, subd. 3. Grounds exist to take disciplinary action against the Post's lawful gambling licenses, including the revocation or suspension of its licenses if the Board determines that is appropriate.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Gambling Control Board take disciplinary action against the lawful gambling license of Hibbing VFW Post 8510.

Dated this 11 day of June, 1994.



STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

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