WEST VIRGINIA CODE: §29-22A-15

§29-22A-15. Hearing and appeal procedure; order refusing license or permit or suspending or revoking same; petition for hearing; petition requirements; cost of hearings; subpoenas and subpoenas duces tecum; no stay of suspension or revocation order; hearing date; place of hearing; continuances; absence of petitioner; hearing; argument and briefs; evidence admissible at hearing; record of proceedings; commission's decision; appeal to circuit court.

(a) If the commission refuses to issue a license or permit, or suspends or revokes a license or permit, it shall make and enter an order to that effect including a statement of the reasons for that action and shall, by certified mail, return receipt requested, mail a copy of the order to the applicant, or the license or permit holder, or serve the same in the manner provided for the service of legal process.

(b) Any applicant or licensee or permit holder adversely affected by such order has the right to a hearing thereon before the commission or a person designated as hearing examiner, if a petition in writing requesting a hearing is served upon the commission within ten days following the receipt of the order by such applicant, or license or permit holder.

(c) The petition for a hearing shall be in writing and shall include an original and one copy. The petition must contain the following:

(1) A clear and concise statement of each error which the petitioner alleges to have been committed by the commission in refusing to issue a license or permit, or suspending or revoking a license or permit, with each assignment of error being shown in separately numbered paragraphs.

(2) A clear and concise statement of fact upon which the petitioner relies as sustaining each assignment of error.

(3) A prayer setting forth the relief sought.

(4) The signature of the petitioner.

(5) Verification by the petitioner.

(d) The person demanding a hearing shall give security for the cost of the hearing in the amount of $300 in the form of certified check, cashier's check or money order, which shall accompany the petition demanding a hearing.

(e) In all hearings held under this article, oral and documentary evidence may be required through the use of subpoenas and subpoenas duces tecum. Subpoenas or subpoenas duces tecum may be issued by either the commission or its duly appointed hearing examiner and the following provisions shall govern and control:

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(1) Every subpoena or subpoena duces tecum must be served at least five days before the return date thereof, either by personal service made by any person eighteen years of age or older, or by registered or certified mail, but a return acknowledgment signed by the person to whom the subpoena or subpoena duces tecum is directed is required to prove service by registered or certified mail.

(2) All subpoenas and subpoenas duces tecum shall be issued in the name of the commission. Service of subpoenas and subpoenas duces tecum issued at the insistence of the commission are the responsibility of the commission, but any party requesting issuance of a subpoena or subpoena duces tecum is responsible for service of any such subpoena. Any person who serves a subpoena or subpoena duces tecum is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state and fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of this state.

(3) All fees shall be paid by the commission if the subpoena or subpoena duces tecum is issued, without the request of an interested party, at the insistence of the commission.

(4) All fees related to any subpoenas or subpoena duces tecum issued at the insistence of an interested party shall be paid by the interested party.

(5) All requests by an interested party for a subpoena and subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

(6) Any person receiving a subpoena or subpoena duces tecum issued hereunder shall honor the same as though it were issued by a circuit court of this state and shall appear as a witness or produce such books, records or papers as are requested in response to a subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, shall, upon application by the commission, compel obedience by contempt proceedings as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the circuit court or a refusal to testify therein.

(f) The service of a petition for hearing upon the commission shall not operate to suspend the execution of any suspension or revocation of a video lottery license or permit with respect to which a hearing is being demanded.

(g) The commission shall set a date for any hearing demanded and notify the person demanding a hearing not later than seven days before the hearing date of the date and time of the hearing, which hearing shall be held within thirty days after receipt of the petition.

(h) Hearings may not be delayed by a motion for continuance made less than ten days before the date set for the hearing.

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(i) The commission may designate a hearing examiner to conduct any hearing.

(j) The petitioner may appear individually, or by legal counsel.

(k) The petitioner, or his duly authorized representative, may, with the approval of the commission, waive the right to a hearing and agree to submit the case for decision upon the petition and record, with or without a written brief. Waivers and agreements must be in writing or upon the record.

(l) The petitioner shall be given an opportunity for argument within the time limits fixed by the commission following submission of evidence. The commission, upon request of the petitioner, shall accept briefs in addition to or in lieu of argument. Briefs must be filed within ten days after the hearing date.

(m) The commission may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law. A finding is to be supported by the kind of evidence commonly relied upon by reasonably prudent men in the conduct of their affairs, whether or not the evidence would be admissible before a jury. The commission may exclude any evidence which is irrelevant, unduly repetitious or lacking in substantial probative effect.

(n) There shall be a record made of all hearings held pursuant to this article.

(o) After the conclusion of the hearing and within ten days of receipt of the transcript thereof and receipt of any briefs, the person designated by the commission as hearing examiner shall prepare a recommended decision, supported by findings of fact and conclusions of law, affirming, modifying or vacating the earlier order of the commission. Thereafter, the commission, within ten days of receipt of the recommended decision, shall either accept or reject the recommended decision, and if it accepts the decision, it shall cause the director to sign and acknowledge the recommended decision as its own, after having reviewed the transcript and all exhibits attached and affixed thereto; and if it shall reject the same, it shall within ten days of receipt of the recommended decision prepare a decision setting forth its own findings of fact and conclusions of law. In either event, the decision shall be final unless vacated or modified upon judicial review thereof. A copy of the decision shall be served upon each party to the hearing and their attorney of record, if any, in person or by registered or certified mail.

(p) A petition for appeal by an applicant, licensee or permit holder may be filed with the circuit court of Kanawha County, West Virginia, or with the circuit court of the county in which the racetrack is located, if filed no later than thirty days after the date upon which the petitioner receives notice of the final decision of the commission.

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