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June 22, 2007

VIA HAND DELIVERY

Richard Sandusky, Director
Regulatory Review
Pennsylvania Gaming Control Board
5th Floor, Strawberry Square
Harrisburg, PA 17101

Re: Greenwood Gaming and Entertainment, Inc.'s Comments
to Proposed Rulemaking In re: Regulation #125-61

Dear Mr. Sandusky:

Enclosed please find Greenwood Gaming and Entertainment, Inc.'s comments to
Proposed Rulemaking with regard to the above-referenced Regulation.

Respectfully submitted,



Alan C. Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/spa
Enclosure

HAR:73627.1/PHI273-230266

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**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

In re: Regulation #125-61
Proposed Rulemaking - 58 Pa. Code,
Chapters 421a, 423a, 425a, 427a, 431a, 436a,
438a, 439a, and 440a

**GREENWOOD GAMING AND ENTERTAINMENT, INC.'S
COMMENTS TO PROPOSED RULEMAKING**

Greenwood Gaming and Entertainment, Inc. ("GGE") is the holder of a Category 1 slot machine license which authorizes GGE to operate Philadelphia Park Casino in Bensalem, PA. GGE submits these comments to the Board's Proposed Rulemaking, as captioned above, which was published in the *Pennsylvania Bulletin* on May 12, 2007 at 37 Pa. B. 2197.

COMMENTS TO CHAPTER 421a AND 423a

The primary focus of GGE's comments pertain to Chapters 421a and 423a of the proposed regulations which would establish the future requirements governing the application process for license, permits, registrations and certifications. GGE has lived through the application process for both a conditional and permanent Category 1 slot machine license including the licensing and permitting of its employees, and is not requesting modification of the regulations applicable to the initial applications. Instead, while the proposed regulations are unclear, GGE strongly opposes any annual renewal process contemplated by the proposed regulations which would amount to a repeat (or anything resembling a repeat) of the original process. Adoption of such a costly and burdensome renewal process would be wasteful of both governmental and private resources with little, if any, public benefit and should be rejected by the Board.

The statutory framework for the renewal process is established through Section 1326 of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S. § 1326. Under Section 1326(a), renewal applications must be submitted annually at least 60 days prior to the expiration of the permit or license. Under this provision, "[T]he application for renewal shall include an update of the information contained in the initial and any prior renewal application and the payment of any renewal fee required by this part." Furthermore, if a timely renewal application has been received by the Board, the underlying license will continue in effect "unless and until the Board sends written notification to the holder of the permit or license that the board has denied the renewal of such permit or license."¹ Finally, renewals are only addressed and permitted by Section 1326 for licenses and permits, and are not applicable to registrations or certifications.

Unlike the original application processes in which fundamental suitability of entities or persons are at issue, the renewal process is intended by statute to be a very streamlined and narrow process which is restricted to events in the prior year which are material to continued licensure. What the statutory scheme does not envision is a costly or burdensome process which revisits general issues of suitability outside of the narrow scope of material updates.

Unfortunately, the proposed rulemaking, while addressing renewal issues does not clearly establish a renewal process which is compliant with the statute. Unlike the statute, there is no specific provision governing renewals, and Chapters 421a and 423a seem to treat renewals in identical fashion to the original licensure and permitting process.²

¹ Or in other words, the statutory renewal process is a "deemed approved" process in which the license continues in effect unless expressly denied and does not require the Board to specifically act on renewal applications unless denial is intended.

² The Board has not posted any renewal forms except for those applicable to manufacturers and suppliers. The manufacturer and supplier renewal forms while unnecessarily

Accordingly, there is nothing in the proposed regulations which establishes the scope, requirements, or disposition of any renewals and the Board should address all of these issues in its final rulemaking order. First, the final regulations should clarify that, compliant with Section 1326, the application will only include and the Board's investigation and review will be restricted to material updates over the previous year. Second, the final regulations should define "material" to include only those updates which could have an effect on a continued finding of suitability.³ Third, since it is not always clear when the prior license was actually issued, final regulations should provide that the Board will not notify each individual and corporate applicant 120 days prior to expiration of a given license or permit so that the renewal application can be prepared and submitted in a timely manner. Fourth, the final regulation should clarify that, consistent with Section 1326, the renewal application will be deemed approved unless expressly denied by the Board. Finally, the final regulations should clarify that, consistent with Section 1326, renewals

voluminous, do focus on updates. However, renewal of manufacturer licenses and supplier licenses, unlike other renewals, are governed by the provisions of Section 1317, not Section 1326, of the Gaming Act -- which section has different requirements and broader renewal scope.

³ For example, one of the areas of potential update is an individual investor, officer, director or key employee's net worth statement. Of course, net worth statements change from day to day as investments change in value, bills are paid, and items are purchased. Most of these events are completely immaterial. Accordingly, in the context of net worth statements, the Board should establish a benchmark under which individual charges in the net worth statement are not material unless they effect the renewal applicant's net worth by at least 10%.

are only applicable to licenses and permits, and not to registrations, certifications, or any other type of regulatory approval.

The importance of a renewal process that closely tracks the statute and operates in the most efficient, and least costly and burdensome manner possible is extremely important. As the Board is aware, the Gaming Act imposes an extremely high tax rate on the gross revenue of slot machine licenses, which are competing with casinos in other jurisdictions, and, in particular, New Jersey, with a tax rate which constitutes a fraction of the Pennsylvania rate. In order to prevent this problematic scenario from being exacerbated, it is critical that only necessary regulation, consistent with the Gaming Act, be implemented and exercised by the Board.

The Board cannot lose sight of the fact that regulation imposes costs directly on the regulated industry and causes the Commonwealth and its agencies to incur costs which may then be the subject of recovery from the regulated industry. Accordingly, given the disparate tax rate with competing jurisdictions, the Pennsylvania gaming industry can only remain competitive if continuing and aggressive attempts are made to restrict the imposition of regulation to that which is consistent with the Gaming Act and for which the public benefit outweighs the associated costs.

The renewal process addressed by this proposed rulemaking is a good example of an area in which the Board must be diligent in imposing only necessary regulations in the most efficient manner possible. Such an approach is not only in the best interests of the regulated industry, but also the Commonwealth and the public.

COMMENTS TO CHAPTER 427a.5

Section 427a.5 of the proposed regulations provides that a slot machine licensee may only service or repair a slot machine or associated equipment pursuant to a written agreement with a licensed manufacturer. As GGE understands it, this requirement was included in the

Board's temporary regulations at a point in time when suppliers of slot machines were a mandatory middleman in the sale of slot machine from manufacturers to slot machine licensees. With the elimination of that mandatory requirement, it appears that the written contract requirement no longer serves any purpose. While certainly manufacturers (or their designees) are permitted to repair slot machines or associated equipment that the company manufactures,⁴ the slot machines and associated equipment are generally the property of the slot machine licensee, not the manufacturer. Accordingly, the slot machine licensee should be permitted to maintain and repair its equipment with or without a written contract with a manufacturer.

WHEREFORE, for all of the foregoing reasons, GGE respectfully requests the Board to incorporate its comments into its final rulemaking.

Respectfully submitted,



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Date: June 11, 2007

⁴ See 4 Pa. C.S. § 1317.1(D.1)(1)