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Ono Fire Company
P.O. Box 22
Ono, PA 17077
onofireco@comcast.net

INDEPENDENT REGULATORY
REVIEW COMMISSION
#2692

June 1, 2008

Paul Resch, Secretary
Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060

Re: Public Comment on Proposed Regulation 125-85

**COMMENTS OF THE ONO FIRE COMPANY,
EAST HANOVER TOWNSHIP, LEBANON COUNTY**

Dear Secretary Resch,

Enclosed for filing with the Pennsylvania Gaming Control Board are Comments of the Ono Fire Company concerning the proposed regulation #125-85 redefining the term "licensed facility."

The Ono Fire Company provides volunteer emergency fire and medical services to East Hanover Township, Lebanon County, many surrounding areas, and the interstate highways. The Penn National Racetrack and Hollywood Casino facilities are located on the county line, partially in East Hanover Township, Dauphin County and partially in East Hanover Township, Lebanon County.

Under a long-standing Mutual Aid agreement with the Grantville Volunteer Fire Company and East Hanover Township, Dauphin County, we provide "first due" emergency fire services to the Penn National Racetrack and the new Hollywood Casino. This emergency response protocol is approved by each township's Board of Supervisors. This means that county dispatchers automatically summon both fire companies for all types of fire calls at Penn National Racetrack.

We provide additional firefighters and fire apparatus necessary to protect the public and the structures at Penn National for any fire emergency. We also provide the "first due" aerial ladder truck service for the Hollywood Casino complex.

Respectfully Submitted,

Gail Phelps Smith, Vice President
Ono Fire Company

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

Re: Pennsylvania Gaming Control Board : Proposed Rulemaking #125-85
Amending Definition of "Licensed Facility" :

**COMMENTS OF THE ONO FIRE COMPANY,
EAST HANOVER TOWNSHIP, LEBANON COUNTY**

The Pennsylvania Gaming Control Board (PGCB) proposes¹ to redefine the statutory term² "licensed facility" under the Pennsylvania Race Horse Development and Gaming Act.³ Although the Board calls this proposal an expansion and clarification of the statutory term, instead the proposal radically constricts the meaning of the statutory definition to limit the coverage of the area of the "licensed facility" to the casino floor instead of the entire land-based facility contemplated by the Legislature in passing the Gaming Act.

One effect of the PGCB proposal is to curtail the area of the "licensed facility" at Hollywood Casino and Penn National Racetrack, such that one of the two townships where Penn National Racetrack is actually physically located would no longer be included as a recipient of the Local Share Assessment designed by the Legislature to compensate local municipalities for the additional local costs of casino gaming. In particular, East Hanover Township, Lebanon County, apparently would be ousted from receiving any portion of the Local Share Assessment by the PGCB. This effect is acknowledged by the Regulatory Analysis statement by PGCB.

Under the PGCB proposal, a minimum of twenty million dollars (\$20,000,000) per year would be granted to Dauphin County municipalities, but zero (\$0) for Lebanon County or East

¹ 38 Pa.B. 2053 (May 3, 2008).

² 4 Pa.C.S. § 1103.

³ 4 Pa.C.S. §§ 1101-1904.

Hanover Township, Lebanon County, despite the uncontroverted facts that the Penn National Racetrack property straddles the county line and that the costly local municipal effects also sprawl into two counties, and into two different second-class townships, each named East Hanover Township.

For the following reasons, the Ono Fire Company⁴ of East Hanover Township, Lebanon County, objects to this proposed regulation.

I. THE PROPOSED REGULATION EXCEEDS THE AUTHORITY OF PGCB

To the extent that the proposed rulemaking is intended to or actually does restrict the disbursement of State Gaming Funds to local municipalities because of location, the proposal exceeds the authority of the PGCB because all authority over disbursements is exclusively granted by statute to the PA Department of Revenue.

The Gaming Act essentially provides that the PGCB will license and regulate⁵ gaming activities under the Gaming Act, but that the PA Department of Revenue will collect and disburse funds deposited by applicants and licensees into the State Gaming Fund.⁶ The PA Department of Revenue has promulgated regulations covering the collection and disbursement of funds from the State Gaming Act, found at 61 Pa.Code Ch. 1001.

The PGCB is merely granted “general and sole regulatory authority over the conduct of gaming or related activities (...)”⁷ including licensing authority. The PA Department of Revenue, in contrast, has exclusive authority over disbursement of the State Gaming Funds and is directed under

⁴ The Ono Fire Company is a Pennsylvania non-profit corporation dedicated to providing all-volunteer emergency services for all of East Hanover Township, Lebanon County, since 1952.

⁵ 4 Pa.C.S. § 1202

⁶ 4 Pa.C.S. § 1403

⁷ 4 Pa.C.S. § 1202 (a)(1). Other general and specific authorities are provided for the PGCB, however, none include disbursements of the State Gaming Funds.

the Gaming Act to disburse the Local Share Assessment Funds.⁸ The distribution of the Local Share Assessment is determined by the physical location of the defined “licensed facility.”

The term is also used in the Gaming Act for siting and licensing of various gaming facilities. These concerns are within the purview of the PGCB, and may, perhaps, require some clarification as is stated in the rulemaking preamble. These clarifications, if warranted, must be expressly limited to siting and licensing concerns that are within the purview of the authority of the PGCB.

If these clarifications to siting are deemed warranted, the PGCB should expressly limit any changes to the statutory definition of “licensed facility” so that it is abundantly clear that these changes to the definition have no effect on the authority of the PA Department of Revenue or the disbursement of Local Share Assessment funds.

II. THE PROPOSED REGULATION IS CONTRARY TO THE GAMING ACT.

The Gaming Act is certainly replete with local and county benefits, benefits to taxpayers, racing interests, school districts, economic development, and interests of all sorts. It is explicitly written to compensate local municipal governments and adjoining or adjacent communities that feel the adverse effects of such development.⁹

However, the proposed regulation would ostensibly prevent a municipality where part of the facility is actually located from recouping any funds at all from the Local Share Assessment.

The Regulatory Analysis of the proposed regulation candidly admits that some Legislatively-intended beneficiaries of the State Gaming Fund would become ineligible for State Gaming Funds if this proposal becomes law. Surprisingly, this effect is apparently disregarded as if it were unimportant. The PGCB has apparently decided *sua sponte* that the Legislature’s complex choices as

⁸ 4 Pa.C.S. §1403(c)(2) (relating to counties); and §1403(c)(3) (relating to local municipalities).

⁹ See, 4 Pa.C.S. § 1403 generally.

to which citizens, entities or municipalities were entitled to benefit were wrong.¹⁰ PGCB has substituted its own judgment and selection of beneficiaries by changing the wording of the statutory definition “licensed facilities.” The PGCB has severely narrowed the term to be merely the casino floor, no longer including all of the “physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines” included by the Legislature.¹¹

This decision by PGCB is contrary to the express terms of the statute in a number of ways:

Category 1 gaming facilities must be located at a Racetrack¹², for example. Any racetrack takes a lot of acreage and includes horse stables, exercise yards, feed storage areas, stables, housing for stable staff, and extensive manure management areas. Any complex of that nature must have administrative buildings, ample parking and sewage treatment facilities merely for the track itself and the backside areas. But the actual Racetrack and all its necessary associated areas are not included in PGCB’s new proposed definition of “licensed facility.”

Penn National Gaming and its affiliated entities have operated Penn National Racetrack for many years on a rural campus including hundreds of acres, as is expressly stated in their casino license application. The Racetrack is required by statute for the Category 1 license, and yet, PGCB’s change to the statutory term has now excluded consideration of the hundreds of acres required for the Racetrack – and required by statute for the Category 1 license.

Penn National’s site was established by a land subdivision plan duly filed with Dauphin County decades ago. The entire subdivision is regulated as one piece of land, and includes many associated areas such as the manure management facilities and sewage treatment plant for the casino

¹⁰ The proposal very obviously disregards the comments of Senators Brightbill and Fumo on final passage in the Senate, and all comments expressly stating that Lebanon County’s 22 acres in the Penn National facility are intended to be included for the Local Share distribution. *See* Senate Journal of October 27, 2006 at 2204-2208.

¹¹ 4 Pa.C.S. § 1103 (definitions)

¹² 4 Pa.C.S. § 1302 (Category 1 licensees must own a duly licensed horse racetrack facility.)

that are physically located on the Penn National portion in Lebanon County¹³. The Hollywood Casino cannot operate without these parts of the entire land-based “licensed facility.” Bathrooms, stables and equine exercise areas at the Casino are probably not required or regulated by PGCB, however, they are certainly an essential part of the “licensed facility” and have effects on the local government and surrounding downstream area. These local effects should be compensated by Local Share Assessments, and must be included within the term “licensed facility.”

The extensive supporting areas of a major Racetrack and Casino impose many costs and intrusions on the local area, and expenses on the local emergency service agencies. It’s not just the Casino floor that has an impact by any means.

The statute also expressly recognizes that a licensed facility might be “physically located” in more than one municipality or county.¹⁴ It seems extremely unlikely that a single building would be, however, the PGCB’s proposal simply ignores these express provisions of the Gaming Act in Section 1403.

From the perspective of the one of the local volunteer fire companies charged with the duty of protecting the public at the Penn National Racetrack, all of these associated areas are very significant.

The rambling wooden horse barns on the backside have huge quantities of hay and straw providing fuel for raging fires. The backside housing for the racing staff is sprawling and covers many acres of potential structure fires with hundreds of residents. The Casino itself has many kitchens and holds thousands of visitors in a multi-story building set in a densely-congested parking area. Visitors travel to and from Penn National along congested interstates and local roads where local volunteer firefighters from many local companies must respond to increasing numbers of vehicle accidents.

¹³ 22 acres of Penn National Racetrack are located in Lebanon County, according to the Penn National Gaming application and the official land subdivision plan for the facility.

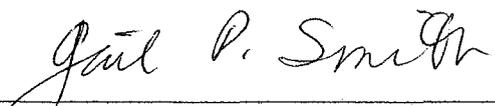
¹⁴ 4 Pa.C.S. § 1403(c)(2)(vi) (relating to several counties); and 4 Pa.C.S. § 1403(c)(3)(x) (relating to several municipalities)

All of this complex physical land-based setting that makes up the "licensed facility" is very significant to the volunteers who must come to fight fires and save lives at such a place, but the existence of these features would be ignored under the PGCB proposal.

CONCLUSION

It is respectfully submitted that the PGCB lacks any authority to change a statutory term such that the new meaning is contrary to the statute; and further, that the PGCB has no authority at all to regulate the disbursements from the State Gaming Fund that are under the exclusive jurisdiction of the Pennsylvania Department of Revenue.

Respectfully submitted,



Gail P. Smith
Vice President, Ono Fire Company
P.O. Box 22
Ono PA 17077
onofireco@comcast.net