



Lebanon County Commissioners

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William G. Carpenter
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County Commissioners

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November 13, 2008

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Attorney General Thomas W. Corbett, Jr.
Strawberry Square
Harrisburg, PA 17102

Dear Attorney General Corbett:

On behalf of the County of Lebanon and the Township of East Hanover, Lebanon County, and our District Attorney, Dave Arnold, we hereby request a personal meeting with you to review the impact of Final Form Regulation 125-85, which has been proposed by the Gaming Control Board and approved by IRRC.

The regulation redefines the Gaming Act's definition of "licensed facility". In doing so, the proposed definition creates a number of unintended consequences, including (i) restricting the jurisdiction of the State Police so that they cannot control areas adjacent to casino floors, (ii) preventing licensed gaming entities from barring repeat offenders from any areas associated with the gaming facility other than the casino floor itself, (iii) limiting the appeal jurisdiction of the Supreme Court that was granted in Section 1506 dealing with zoning and land use appeals, and (iv) preventing the equitable distribution of gaming revenues to local government units. The proposed definition is not consistent with the intent of the General Assembly and, if enacted, will be vulnerable to a court challenge. The Board claims the regulation is important to define its "jurisdiction" but it is common knowledge that the need for this is based upon the restrictions in Section 1305(b)(1) and a plan to locate two facilities that currently have land areas that are within 15 miles of each other.

It is ironic that the Gaming Board, speaking through its representatives, has admitted that the new definition prevents the equitable distribution of gaming revenues, but has nevertheless claimed that such an objective was not their intent¹. The Board claims the regulation is important for its duty to site facilities but has rejected opportunities to craft it in such a way as to enable it to reach all the objectives that it has been given by the General Assembly.

We are aware that the law requires two reviews by the Attorney General, inferring that one has already occurred. We believe that because of the future impact of this regulation, not just to our municipal governmental units but primarily upon the law enforcement climate throughout Pennsylvania, your personal review and ability to make tough decisions is critical.

We would note that the first review by your office may have been carefully conducted, but was likely done without the benefit of advocacy. A fundamental hallmark of both our legal and political systems is their reliance on strong advocacy before the decision maker to drive better, reasoned judgments. This element of advocacy, we believe, would have been lacking in the prior review by your

¹ "The change in definition was important to establish the jurisdiction of the gambling board; it was not intended to penalize Lebanon County, said commission spokesman Doug Harbach." Lebanon Daily News, 11/7/2008.

office, however earnestly undertaken. In addition, the General Assembly, in creating a dual review process by your office, obviously had the intent that, following public scrutiny in the IRRC process, new legal arguments could emerge – thus making it unlikely that the second review was intended to be “pro forma”.

You should be aware that at the meeting of IRRC there was one negative vote. The motion to approve the regulation was made on a written proxy by a member who left before our arguments were made. A third member was hurrying somewhere else by driving and “participating” by cellular phone. Thus, IRRC we believe, did not provide an effective review in its legal duty to determine whether the regulation met the needs of effecting the intent of the General Assembly.

Our request is that you and your staff meet with our representatives personally, allowing us time to prepare and present, and you and your staff time to review, a presentation of legal arguments, with, of course, the same courtesy being afforded to the Gaming Control Board and other interested parties. This, of course, must be done with the 30 day limit that is currently in the law.

We believe this element of due process is very important. It has been reported to one of our lawyers that at the meeting when this proposal was presented to the gaming board, it was misrepresented that our local governmental units were in agreement².

Thank you for your consideration of this request.

Sincerely,



William G. Carpenter


Larry E. Stohler
Jo Ellen Litz

WGC/LES/JEL

pc: Senator Mike Folmer

Representative Mauree Gingrich

Representative Rosemarie Swanger

Gaming Control Board, Mary DiGiacomo, Chair

Frank T. Donaghue, Acting Executive Director

✓ Kim Kauffman, IRRC Executive Director

Robert A Mulle, Director, Legal Review Section, Civil Law Division, Office of the Attorney General

Louis J Rovelli, Head of the Civil Law Division, Office of the AG

District Attorney David Arnold

Attorney Samuel Weiss

² The transcript of the Board meeting has not been made available, despite several requests by members of the General Assembly.