

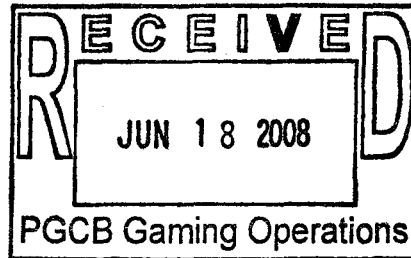
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INDEPENDENT REGULATORY
REVIEW COMMISSION



J. SCOTT KRAMER
DIRECT DIAL: 215.979.1122
PERSONAL FAX: 215.979.1020
E-MAIL: JSKramer@duanemorris.com

www.duanemorris.com

June 16, 2008

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

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Re: Public Comment on Regulation #125-86

Dear Mr. Resch:

On behalf of Sands Casino Resort Bethlehem, a Category 2 License Holder, and its affiliated entities and principals, we submit for your consideration the following comments on the proposed rulemaking #125-86 (the "Proposed Rulemaking") published in the May 17, 2008 *Pennsylvania Bulletin*.

The Proposed Rulemaking seeks to amend section 441a.7 of the gaming regulations to include a provision which permits the Pennsylvania Gaming Control Board (the "Board") to request an applicant disclose confidential information at a licensing hearing. Although we understand that the Board's likely objective for implementing the Proposed Rulemaking is to increase the transparency of the licensing process, we believe this proposal fails to strike an adequate balance between achieving this objective while also upholding the applicant's statutory right to safeguard confidential information as guaranteed by the Gaming Act and current regulatory framework.

The Gaming Act reflects a presumption that information submitted to the Board is confidential providing that "[a]ll information submitted by an applicant pursuant to section 1310(a) (relating to slot machine license application character requirements) or obtained by the board or the bureau as part of a background investigation from any source *shall be considered confidential*." 4 Pa. CS 1206(f) (emphasis added). Under the current gaming regulations, the Board may not disclose such confidential information to the public unless either (1) the applicant *requests* disclosure of the information or (2) the applicant's actions make the information part of the public domain. See 58 Pa. Code 407a.3(b)(2)(i)-(ii) (emphasis added).

Under the Proposed Rulemaking, however, the Board, during a licensing hearing, may require that an applicant respond to inquiries which would lead to the disclosure of confidential

Paul Resch
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Page 2

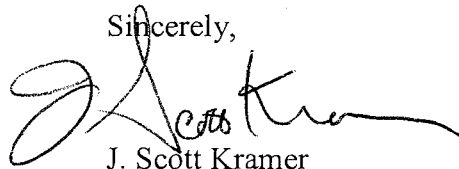
information. We understand that the Proposed Rulemaking affords the applicant with an opportunity to protect confidential information from disclosure at the hearing by requesting that the matter be heard in executive session. However, in order to proceed with an executive session, the applicant must submit a "sufficient reason" for maintaining his or her right to confidentiality. This proposed burden shifting is contrary to the Gaming Act and its legislative intent reflected in the current regulations which presume information submitted to the Board is confidential and thus protected unless the applicant waives this designation.

Moreover, although the Proposed Rulemaking expressly bars the Board from conditioning an applicant's receipt or renewal of a license upon the waiver of its statutory right to confidentiality, the new hearing procedures could easily be perceived by an applicant as coercive. The new rule permits the Board with its considerable authority to "request" a waiver of confidentiality and the pressured applicant is required to "justify" the refusal to waive a statutory right. By the addition of a requirement for "sufficient reasons," the message is sent that evoking the statutory sections that provide confidentiality as a matter of right [4 Pa. CS 1206(f)] will be insufficient.

Accordingly, we believe that the Proposed Rulemaking should be revised to exclude the Board from requesting disclosure of confidential information during a licensing hearing unless consented to by the applicant. If the applicant does not waive his or her right to confidentiality, then the matter should proceed directly to executive session without requiring the applicant to further justify under a vague standard the statutory invocation of confidentiality.

Please contact me with any questions or concerns regarding the above.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Scott Kramer", written over a horizontal line.

J. Scott Kramer

JSK/SKB/lmb

cc: Arthur Coccodrilli, Chairman, IRRC

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