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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 24, 2008

Frank Donaghue, Acting Executive Director
Pennsylvania Gaming Control Board
Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17106-9060

Re: Regulation #125-91 (IRRC #2708)
Pennsylvania Gaming Control Board
Preliminary Provisions; Onsite Shopkeepers Certification, Labor Organizations; and Slot
Machine Licenses

Dear Mr. Donaghue:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

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Enclosure

cc: Honorable Jane M. Earll, Chairman, Senate Community, Economic and Recreational
Development Committee
Honorable Gerald J. LaValle, Minority Chairman, Senate Community, Economic and
Recreational Development Committee
Honorable Harold James, Majority Chairman, House Gaming Oversight
Honorable Paul I. Clymer, Minority Chairman, House Gaming Oversight

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board Regulation #125-91 (IRRC #2708)

Preliminary Provisions; Onsite Shopkeepers Certification, Labor Organizations; and Slot Machine Licenses

September 24, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the July 26, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Gaming Control Board (Board) to respond to all comments received from us or any other source.

1. Regulation of “onsite shopkeepers.” - Statutory authority; Need, Economic impact; Reasonableness.

The proposed rulemaking provides for regulation of an “onsite shopkeeper” in Chapter 434a. *Onsite Shopkeeper Certification*. The regulation defines “onsite shopkeeper” in Section 401a.3 as:

A person, other than a slot machine licensee, who engages or proposes to engage in any commercial activity at the licensed facility and who is not otherwise required to be licensed, certified or registered.

The opening of the Board’s Preamble states:

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(15) and (30) (relating to general and specific powers) and the authority in 4 Pa.C.S. §§ 1102(8) and (9), 1202(23) and 1313 (relating to legislative intent; general and specific powers; and slot machine license application financial fitness requirements), proposes to amend Chapters 401a, 438a and 441a (relating to preliminary provisions; labor organizations; and slot machine licenses) and add Chapter 434a (relating to onsite shopkeeper certification) to read as set forth in Annex A.

As discussed below, we have concerns with the proposed regulation of onsite shopkeepers relating to our criteria of statutory authority, need, economic impact and reasonableness.

Statutory authority

Commentators do not believe the Board has authority to regulate onsite shopkeepers. The commentators argue that the Pennsylvania Race Horse Development and Gaming Act does not address the issue of onsite shopkeepers or any standards by which such entities and their employees should be licensed. They believe that since these businesses do not provide any goods, services or property to slot machine licensees, they should not be regulated. The commentators do not believe the Board's general authority encompasses the regulation of onsite shopkeepers.

As quoted above, the Board cites its general authority for this rulemaking. We agree with the commentators that the Pennsylvania Race Horse Development and Gaming Act does not address the issue of onsite shopkeepers. Therefore, the Board should explain how it has authority to regulate onsite shopkeepers and how it will defend its actions under the general authority of the statute and the specific requirements set forth in this regulation.

Need, Economic impact and Reasonableness

Commentators provided a wealth of argument, examples and cost analyses in support of their position that onsite shopkeepers do not need to be regulated. Commentators believe the regulation is "devoid of any public benefit" and is "burdensome and costly." They provided an example that employees who scoop ice cream would be required to be fingerprinted and complete non-gaming employee registrations. They point to the costs related to certification of employees that would be wasted due to the high turnover rate of these employees. They provide information that other states either do not regulate onsite shopkeepers or use minimal regulation (including New Jersey, Nevada, Colorado, Illinois, Indiana, Iowa Mississippi and Missouri).

We agree with the commentators that the Preamble does not provide sufficient justification of the need, cost and reasonableness to regulate onsite shopkeepers. In support of the final-form regulation, the Board needs to provide justification for the need to regulate onsite shopkeepers and explain how the costs and administrative burden placed on these shops is outweighed by the need to regulate them.

2. Section 401a.3. Definitions - Need; Reasonableness; Clarity.

Onsite shopkeeper

“Onsite shopkeeper” is defined as “A person, other than a slot machine licensee, who engages or proposes to engage in any commercial activity at the licensed facility and who is not otherwise required to be licensed, certified or registered.” A key phrase of this definition is that it includes a person who engages in any commercial activity at the “licensed facility.” It is not clear who is encompassed by this definition and therefore must be certified under this proposed rulemaking.

The existing definition of “licensed facility” in this same section states: “The physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines.” This wording is exactly the same as the statutory definition (4 Pa. C.S. § 1103) and consequently does not provide any further guidance on the Board’s interpretation of the boundaries of a licensed facility. Taken broadly, the regulation may encompass any business located on land physically owned by the licensee, which may include many acres of land. Taken more narrowly, the regulation may only affect locations where the “gaming entity is authorized to place and operate slot machines.”

Additionally, the Board is amending the definition of “licensed facility” in rulemaking #125-85 titled “Licensed Facility” (IRRC #2692). Before we can make a determination of whether this rulemaking is in the public interest, the Board must conclude rulemaking #125-85 and then state clearly in this regulation who is an onsite shopkeeper and required to be certified.

3. Section 434a.2. Onsite Shopkeeper certification applications. - Clarity.

Unless otherwise directed by the Board

Paragraph (a)(1) contains nonregulatory language which allows the requirement for an original and four copies to be amended by the Board. As written, the Board could expand this requirement to require more copies. We recommend deleting the phrase “unless otherwise directed by the Board.”

4. Section 434a.3. Individual certifications and investigations. - Need; Economic impact; Reasonableness; Feasibility.

Pennsylvania Personal History Disclosure Form

This section specifies who must file a Pennsylvania Personal History Disclosure Form. From our review of the Board’s website, this form and accompanying documents are substantially long and detailed, involving many pages of instructions and questions. The response to Regulatory Analysis Form (RAF) Question 14 states the Board anticipates the cost of certification will be

approximately \$10,000, or \$2,500 per year of the four-year certification. However, it is not clear what the specific cost to the applicant is to prepare and file the Pennsylvania Personal History Disclosure Form. The Board should provide an estimated cost for the preparation of this form. The Board should justify the need for these forms from the persons specified in each subsection of the regulation and explain how the need outweighs the costs imposed on those seeking certification.

Subsection (f)

This subsection extends the possibility of filing Pennsylvania Personal History Disclosure Forms to employees of a certified onsite shopkeeper. Commentators believe this provision is onerous because they experience high levels of employee turnover. Why does the Board need so much information from the employees of an onsite shopkeeper and what would the Board do with that information? What does the Board anticipate will be the effect on the viability of a business when employees are required to file these forms?

5. Section 434a.5. Certified onsite shopkeeper responsibilities. - Reasonableness; Economic impact; Feasibility.

Nongaming employee registration

Similar to our comment on Section 434a.4(f) above, Subsection (b) of this section requires employees of a certified onsite shopkeeper to obtain a nongaming employee registration if their job duties require any contact with patrons of the licensed facility. Commentators also find this provision to be onerous because they experience high levels of employee turnover. The commentators do not have the on-site human resources personnel to administer the nongaming employee registration process. Why does the Board need registration of these employees of an onsite shopkeeper and what would the Board do with that information? What does the Board anticipate will be the effect on the viability of a business when employees are required to register?

6. Sections 434a.7. Permission to conduct business prior to certification. - Reasonableness.

Due diligence by the licensee

Paragraph 434a.7(a)(2) requires the licensee to certify it has performed due diligence on the onsite shopkeeper. A commentator questions why the burden should be on the licensee, rather than on the onsite shopkeeper applicant, to demonstrate to the Board it should be certified. The commentator further questions what type of due diligence would meet the Board's regulation. The Board should explain why the burden is placed on the licensee. If that burden

remains with the licensee, the regulation should specify the actions the licensee must take to meet the standard of due diligence.

7. Section 434a.8. Slot machine licensees' duties and responsibilities. - Reasonableness; Clarity.

Licensee investigation of applicants for onsite shopkeeper certification

Subsection (a) requires a slot machine licensee to investigate the background and qualifications of applicants for onsite shopkeeper certification. A commentator believes that a licensee does not possess the same capability or expertise as the Board to investigate backgrounds of applicants. A licensee also does not have access to resources available to the Board to conduct thorough investigations. The Board should explain why investigation of the background and qualifications of an applicant for onsite shopkeeper certification is properly the responsibility of a licensee. If the responsibility is properly placed on the licensee, the Board should put in regulation what specific degree of investigation or actions will meet the requirement.

Affirmative duty to avoid certain applicants

Subsection (b) places the affirmative duty on slot machine licensees to avoid applicants "whose background or association is injurious to the public health safety, morals, good order and general welfare of the people of this Commonwealth, who threaten the integrity of gaming in this Commonwealth or who discredit or tend to discredit the gaming industry in this Commonwealth or the Commonwealth." This provision is vague. What does the Board expect the licensee to do to meet these broad parameters?

Facsimile Cover Sheet



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346-8350 (Front Desk)
Date: September 24, 2008
Pages: 7

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Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Gaming Control Board's regulation #125-91 (IRRC #2708). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Cheryl Posavec Date: 9-24-08