



PhiladelphiaPark
CASINO

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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February 17, 2009

Mr. Scott Schalles
Regulatory Analyst
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg PA 17101

Re: Regulation No. 125-92 -- Clean Indoor Air Act

Dear Mr. Schalles:

Thank you for providing us with the opportunity to meet with IRRRC staff on this matter. We are writing to outline our concerns with proposed regulation 125-92, which deals with the Clean Indoor Air Act ("CIAA") and its proposed implementation in casinos by PGCB. Our initial concerns were set forth in detail in the comment letter submitted by WolfBlock dated December 3, 2008. PGCB has addressed our concern about signage on each slot machine, and our remaining issue deals with the lack of statutory authority on the part of PGCB to promulgate these regulations.

Subsection (e) of the proposed regulations, Section 441a.25(e), is inconsistent with the gaming act and cannot be promulgated. Under this subsection, a licensed facility would not be permitted to increase the size of the smoking area of the gaming floor in response to the Department of Revenue's report, until after the licensed facility requests and receives approval from the Board's Executive Director. However, under 35 P.S. § 637.3(b)(11), once a licensed facility receives the DOR report, it is expressly authorized by statute to increase the size of the gaming floor as permitted by the formula set forth in the CIAA. No regulatory review or approval is provided for or permitted by the statute. The provision is self-executing and any requirement of intervening regulatory review or approval is inconsistent with the statute and should be omitted from any final form rulemaking. While the Gaming Control Board is empowered to cite a licensed facility for violations after the statute is implemented, it has no role in the implementation process.

Although Philadelphia Park Casino has already implemented the smoking area expansion to the 50% maximum permitted under the CIAA, the issue of the Gaming Board's lack of statutory authority is significant and, we believe, is

precisely the kind of issue that IRRC is intended to review and decide. In addition, only half of the authorized casino licenses have been issued to date and the casinos that will be opening in the future will be subject to the provisions of the regulation with which Philadelphia Park takes issue.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T.C. Bonner', with a long horizontal flourish extending to the right.

Thomas C. Bonner

Mr. Richard Sandusky/PGCB
Alan Kohler, Esq.