



**Senate Committee on Community, Economic
and Recreational Development**

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September 28, 2009

The Honorable Arthur Coccodrilli, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Re: Lack of Justification for Final form Rulemaking No. 125-102 (“Key Employees”)

Dear Chairman Coccodrilli:

As the Chair of the Senate Community Economic & Recreational Development Committee, which is responsible for overseeing the administrative function of the Pennsylvania Gaming Control Board (Board) and its regulatory oversight of the PA gaming industry, I would like to express my opposition to the Board’s proposed Final form Rulemaking No. 125-102 (“Key Employees”) in that the Board has not in my opinion established sufficient justification for the expansion of what is encompassed by the term “key employee” in the Pennsylvania Race Horse Development and Gaming Act (Gaming Act). Your consideration of these formal comments is sincerely appreciated.

The Board’s attempt to seek the adoption of a regulation that would significantly expand the application of the “key employee” licensing standard, in place for the past two and a half years, beyond upper-level management personnel associated with slot licensee operations to include shift managers and other employees authorized to issue credit for free slots play or play reward points (which often times can be redeemed for free slots play) is contrary to the original intent of the Gaming Act and the public interest. The Board’s proposed regulation is a classic example of the expansion of regulatory authority without adequate justification of the purpose or need for such regulation. The Board has not identified any industry-wide problem or public threat that would otherwise be prevented by application of a stricter licensing standard. Furthermore, the Board has failed to articulate exactly how a different licensing standard would somehow provide a greater level of protection or predict future improper conduct as compared to the existing licensing process.

The employees being targeted by this proposed Final form Rulemaking have been deemed by the Board to be suitable. They have been performing their jobs well and without serious incident. To suddenly take those same employees and subject them to a new, significantly more intrusive and costly licensing standard without cause or justification is unwarranted.

The most significant difference between the licensing standards for a “gaming employee” and a “key employee” is that the “key employee” licensing standard involves a more detailed, time consuming and costly investigation

into the applicant's non-criminal financial background and history. This is not information that would provide reliable insight into an individual's propensity to commit a fraud. The only certainty is the significant financial cost associated with the Board's proposed regulation. According to the Board, these costs may exceed approximately \$4,000 per employee, which includes an application fee of \$2,500 and an average investigative cost of approximately \$1,500 (and the gaming industry has indicated their overall costs can in some instances approach upwards of \$10,000 per "key employee"). Noteworthy is the fact that the application fee is a recurring annual fee paid each time the license is renewed. These expenses represent a significant increase from the current licensing process associated with obtaining a "gaming employee" license (typically limited to an annual fee of \$350). Regulatory compliance costs associated with the Board's proposed regulation would increase by \$25,550 - \$36,500 per year for each slots licensee in that the Board itself anticipates that between 7 to 10 additional employees will be required to be licensed as "key employees" at each licensed facility.

For these reasons, it is my position that the Board's proposed regulation is contrary to the public interest and should, therefore, be rejected by this Commission. Thank you for your consideration of this matter and please do not hesitate to contact Jason R. Brehouse, Esq. in my office if you should have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jane M. Earll', with a stylized flourish extending to the right.

Jane M. Earll
49th District