

PENNSYLVANIA GAMING CONTROL BOARD

HEARING ROOM 1
NORTH OFFICE BUILDING
HARRISBURG, PENNSYLVANIA

MONDAY, FEBRUARY 12, 2006, 11:33 A.M.

BEFORE:

THOMAS DECKER, CHAIRMAN
MARY DiGIACOMO COLINS
WILLIAM P. CONABOY, via telephone
JEFFREY W. COY
KENNETH T. McCABE, via telephone
JOSEPH W. MARSHALL, III
SANFORD RIVERS
ROBERT P. CASEY, JR., STATE TREASURER, via telephone

HILLARY M. HAZLETT, REPORTER
NOTARY PUBLIC

1 CHAIRMAN DECKER: Good morning. I'm Tad
2 Decker. I would like to welcome you to the Board and
3 this public meeting today.

4 A quorum of the voting members of the Board
5 are present and, therefore, this meeting is called to
6 order.

7 As we noted, Commissioners Conaboy and
8 McCabe and Treasurer Casey are joining us by phone.
9 I believe Mark Morabito is representing the
10 Department of Revenue.

11 A housekeeping note, the Board earlier held
12 an Executive Session to discuss personnel matters,
13 specifically candidates for various employment
14 positions. No business was conducted at the meeting.

15 As always, and I'm the biggest offender,
16 let me ask everyone to turn off their blackberries
17 and other electrical devices because of the
18 interference that they can have with the electrical
19 system or recording system.

20 Okay. Please join me with the Pledge of
21 Allegiance.

22 (Pledge of Allegiance).

23 CHAIRMAN DECKER: Thank you. We have one
24 item today. It's old business, at least one item on
25 the agenda. It's our ethic policy. It is our first

1 and only item. Maybe somebody will have something
2 under new business.

3 Before we go into that in detail, let me
4 just recap, at our last meeting -- excuse me -- back
5 in October we adopted a policy, which basically was
6 to put out for comment.

7 We got a significant amount of comment, and
8 I would like to thank a lot of the individuals and
9 institutions who have sent us that, including
10 Treasurer Casey and Senators Fumo and Jubelirer and
11 many others. They were very, very helpful.

12 Our No. 1 mission is to protect the people
13 of Pennsylvania. In order to do that, we have to
14 ensure that the members of the Board and the people
15 who work at this agency conduct themselves in an
16 appropriate manner beyond reproach.

17 With that in mind, we passed the last
18 policy. Now we have a policy where we're promoting
19 today -- we hope promulgating today. We're going to
20 discuss that today.

21 With that said, I would like to turn this
22 over to Commissioner Marshall who has been a great
23 help in moving this forward.

24 Chip?

25 COMMISSIONER MARSHALL: Thank you, Tad.

1 Good morning, everyone. It's my purpose today to
2 move the adoption of the Pennsylvania Gaming Control
3 Board's Code of Ethics.

4 I have had the opportunity to circulate
5 this individually with a number of the Board Members
6 and I believe Nick, that we will have assuming that
7 this is passed, we will have full text to distribute
8 here. It will be posted on our website.

9 If I may just take a few minutes to kind of
10 review some of the important provisions. As the
11 Chairman said, we have been working on this issue for
12 a long time.

13 I think it bears noting that back in
14 October when we published for comment the initial
15 draft, the members of this Board voluntarily and
16 unanimously agreed to live by that code of ethics
17 during the pendency of this proceeding.

18 I think first and foremost in that document
19 was an absolute prohibition on ex parte
20 communication, which as the Chairman has commented
21 before is probably the toughest standard in the
22 country.

23 The policy is, depending on the printer you
24 use, 13 pages. I would like to take a few moments
25 and review, as I said, some of the important parts.

1 It begins Section 1 as the Code of Ethics
2 Policy and just reiterates our belief that we need a
3 policy that will assure the citizens of this
4 Commonwealth that we will act deliberately,
5 appropriately, in a forthright and transparent
6 manner, borrowing many of the provisions found in Act
7 71.

8 It is followed by a series of
9 qualifications and restrictions, again, found
10 primarily in Act 71 but organized for ease of
11 reference.

12 Paragraph 3 or Section 3, Conflict of
13 Interest. All Board Members and employees -- and I
14 stress and employees -- shall avoid situations in
15 which their personal interest, activities, or
16 financial affairs are or likely to be perceived as
17 being in conflict with the interest of the
18 Pennsylvania Gaming Control Board.

19 Four reiterates that we all, Board Members
20 and employees, have a continuing obligation. Each
21 Board Member and employee has the continuing duty to
22 review and assess his or her conduct in light of this
23 Code of Ethics.

24 Report any conflicts that may arise
25 throughout the year in accordance with Paragraph 4A

1 hereof and cooperate with the Executive Director and
2 ethics liaison officer in all matters relating to the
3 operation and enforcement of the Code of Ethics. We
4 encourage each other and our employees to seek advice
5 whenever there's a question.

6 With respect to reporting obligations, an
7 employee who has a conflict or a potential conflict
8 or knowledge of or reason to believe that there has
9 been a violation of the Code of Ethics shall
10 immediately notify the executive director of ethics
11 liaison officer of the Pennsylvania Gaming Control
12 Board.

13 With respect to members, we are obligated
14 to inform the Board in the event we believe that
15 there is or is likely to be a potential conflict.

16 We have a provision with respect to
17 disclosure and divestiture. We must disclose any
18 prohibited interest in gaming concerns and we must
19 divest as appropriate. Most of these provisions were
20 found -- the basis for these provisions are found in
21 the Statute.

22 Recusal, as provided in Section 1201(f)(3)
23 of Act 71, a Board Member shall disqualify himself or
24 herself and abstain from participating in voting in a
25 proceeding in which his or her impartiality may be

1 reasonably questioned, including but not limited to
2 instances where the Board Member knows that he or she
3 possesses a substantial financial interest in the
4 subject matter of the proceeding or any other
5 substantial interest that could be materially
6 affected by the outcome of the proceeding. Then it
7 goes on at some length to provide guidance with
8 respect to that.

9 We have post employment restrictions.
10 Again, the premise for these are found in Act 71.
11 With respect to gifts, each Board Member and employee
12 is prohibited from accepting or soliciting any gift,
13 gratuity, favor, entertainment, complimentary item,
14 loan, or any other thing of value from anyone known
15 by the Board Member or employee to be an applicant,
16 licensed gaming entity, affiliate, or subsidiary or
17 holding company thereof, other licensee or permittee
18 of the Board or other interested party. We go on,
19 again, with some guidance in that language.

20 Restricted activities. Political
21 activities. And I quote. No voting Board Member or
22 employee shall hold or campaign for public office,
23 contribute to a campaign committee, candidate, or
24 party, solicit directly or indirectly any political
25 contribution for himself or herself or another,

1 actively participate in the campaign or appear at any
2 political fund-raiser.

3 Having been the source of a great deal of
4 confusion on this subject, I hope that these words
5 say in absolute language, it is clear even to the
6 members of the media that there shall be no political
7 activities, no political contributions, no political
8 fund-raising.

9 With respect to nonprofit organizations and
10 activities, a Board Member or employee shall not
11 solicit funds for any charitable, educational,
12 religious, health, fraternal, civic, or other
13 nonprofit entity from any applicant, licensed entity,
14 interested party, or representative thereof.

15 Coupled in that, and I'll quote this
16 language. Nonetheless, a Board Member or employee
17 may serve as an officer, employee, or member of the
18 Board of any such nonprofit entity and may attend,
19 contribute to, and when consistent with the
20 individual's role with the organization assist in the
21 planning of or preside over the organization's
22 fund-raising events and permit his or her name to
23 appear on the letterhead used for any such event,
24 provided the letterhead lists only the Board Member's
25 or employee's name and officer position in the

1 non-profit organization.

2 In English, we will not solicit funds for
3 any purpose from any gaming enterprise or other
4 interested party; and with respect to any kind of
5 broad-based mailing or whatever, only our name shall
6 appear. There shall be no use of our position as
7 either a Board Member or employee of the Pennsylvania
8 Gaming Control Board.

9 We will be prohibited from engaging in
10 gaming activities, we being Board Members and
11 employees.

12 With respect to ex parte communications,
13 and I quote. With respect to any matter involving
14 the discretionary issuance, approval, renewal,
15 conditioning, revocation, suspension, or denial of
16 any license or permit, no Board Member shall engage
17 in ex parte communications with any interested party.

18 If I may go outside for a second and refer
19 you to the definitions, for purposes of this policy
20 the term ex parte means, a direct or indirect
21 communication with a Board Member from any interested
22 party on any matter involving the discretionary
23 issuance, approval, renewal, revocation, suspension,
24 or denial of any license or permit other than that
25 which takes place during a public meeting conducted

1 pursuant to Act 71.

2 With respect to interested party, that term
3 means, with respect to any matter involving the
4 discretionary issuance, approval, renewal,
5 conditioning, revocation, suspension, or denial of
6 any license or permit, any person, corporation, or
7 entity who is supporting or opposing action by the
8 Board or who would be directly affected by the action
9 of the Board.

10 This includes without limitation officers,
11 directors, employees, agents, lobbyists, and
12 attorneys of applicants and licensees and any other
13 party to the proceeding.

14 In English, if you're for or against one of
15 these issues that come before the Board, we're not
16 going to talk to you about it.

17 Now, in the case of an inadvertent
18 disclosure, there is also a provision whereby the
19 Board Member can publish the inadvertent
20 communication, a letter, or something that comes in
21 solicited, and it will be available in a public log,
22 available for all to see and consider.

23 We then go on with proceedings -- with
24 provisions regarding pending proceedings, independent
25 contractors, confidentiality.

1 We require an annual certification. Each
2 Board Member and employee is required annually to
3 affirm his or her commitment to this code and to
4 assure the public of his or her impartiality by
5 completing the, quote, Code of Ethics statement and
6 disclosure form, end form, a copy which is attached
7 as Attachment B to this policy.

8 With respect to violations of this policy,
9 a PGCB employee who violates this Code of Ethics
10 shall be subject to appropriate disciplinary action
11 ranging from reprimand to dismissal.

12 If a Board Member is alleged to have
13 committed a violation of this Code of Ethics, the
14 remaining Board Members have an obligation to discuss
15 the alleged violation and refer the matter to the
16 individual's appointing authority.

17 We also have a provision with respect to
18 specific obligations. It is the duty of each Board
19 Member and employee to refrain at all times from any
20 criminal conduct and to cooperate with law
21 enforcement officers in the proper performance of
22 their official duties.

23 Each Board Member and employee is
24 prohibited from using or attempting to use his or her
25 position with the Pennsylvania Gaming Control Board

1 to obtain unwarranted privileges or advantage for
2 themselves or others.

3 We incorporate by reference the
4 requirements of the Pennsylvania State Ethics Act and
5 the State Adverse Interest Act, except in those
6 situations where this Code of Ethics is more
7 restrictive.

8 The policy has two attachments. One is a
9 series of definitions. I read one with respect to ex
10 parte and with respect to interested parties.

11 The final attachment, Attachment B, is the
12 Code of Ethics statement and disclosure form, which I
13 referenced before.

14 Mr. Chairman, I would like to thank a
15 number of people who helped with this. Michelle
16 Afragola and Jim Dohery were just absolutely
17 essential to the preparation of this draft. I would
18 like to thank the other members of the Board and
19 staff who participated in this.

20 It's my distinct honor and privilege to
21 offer this as a motion for the adoption of the
22 Pennsylvania Gaming Control Board's Code of Ethics.

23 CHAIRMAN DECKER: Thank you. Can I have a
24 second, please?

25 COMMISSIONER RIVERS: Second.

1 CHAIRMAN DECKER: Thank you. I would like
2 to start the discussion, if I might, and then turn it
3 over to the members by pointing out, again, as we did
4 in the October draft ad nauseam for those who don't
5 understand what we tried to do and what we are doing,
6 that the definition of interested party -- and
7 Commissioner Marshall emphasized this to some degree,
8 but in light of the Inquirer article this morning, I
9 thought I might take a crack at trying to explain
10 what the words actually say.

11 With respect to any of those matters that
12 we were talking about, which is surrounding the
13 issuance of licensing, etc., it says, all right, that
14 a Board Member is not entitled to talk to an
15 interested party.

16 An interested party, again, is defined and
17 I'm going to mention the word any person, any person,
18 that includes any category of individual that walks
19 around I presume as a human being, right, who is
20 supporting or opposing.

21 So the mere fact that someone comes to you
22 and says, I'm for this person or I'm against this
23 person or this application, I should say, makes them
24 an interested party.

25 All right. Does that make it clearer if

1 anyone has any doubt? We will be up here and we can
2 answer questions about it afterwards. Okay. Thank
3 you. I hope that does clear up the situation.

4 Anyone else?

5 COMMISSIONER DIGIACOMO COLINS: If I could
6 just by way of general response or general comment
7 regarding this policy.

8 From my perspective and from my background
9 having come from the judiciary, I think that this
10 policy goes a long way to ensuring the independence
11 of the Board Members as we sit in a judicial function
12 making discretionary discussions about licensing and
13 permitting.

14 That, as we all know, is absolutely crucial
15 for a number of reasons. Number one, the public at
16 large has to understand and know that everyone is on
17 a fair playing field in these matters and, to use a
18 metaphor, everyone must know that the deck is not
19 stacked, the dice are not loaded, that this is a fair
20 and impartial process that the Board is going to
21 further.

22 The next thing I want to say is that this
23 policy also goes a long way to ensuring that these --
24 the decisions that the Board will make will be within
25 the four corners of the evidentiary records as

1 they're developed in these cases, and that our
2 actions at all times will be transparent and based on
3 the evidence before us and that, from my perspective,
4 is an extremely important element that this policy
5 provides to not just the Board but to Pennsylvanians
6 at large.

7 So I am very happy to vote on this when we
8 open it up for a vote.

9 CHAIRMAN DECKER: As Mary suggests, we have
10 an obligation even though a license is not a right,
11 it's a privilege. We have an obligation to ensure
12 that each applicant is dealt with and is provided due
13 process. If we're not doing what Mary suggested,
14 that will be open to some criticism and quite
15 possible a successful appeal. That's what we intend
16 to do, provide due process.

17 Any other questions or comments, please?

18 COMMISSIONER McCABE: Mr. Chairman, Ken
19 McCabe here.

20 CHAIRMAN DECKER: Go ahead, Commissioner.

21 COMMISSIONER McCABE: This is Ken McCabe.
22 I want to second. I think Commissioner Colins put it
23 superbly, I think, how all of us feel.

24 I think this policy has come a long way
25 from the beginning and a lot of hard work on

1 everybody's part. I would like to thank everybody
2 for that.

3 CHAIRMAN DECKER: Thanks, Ken.

4 Any other questions or comments?

5 COMMISSIONER MARSHALL: Can I?

6 CHAIRMAN DECKER: Please.

7 COMMISSIONER MARSHALL: I guess just one of
8 these moments of reflection, we're in an interesting
9 position. We are a creature of Statute. So our
10 abilities, and I think Mary put this best, we can be
11 more restrictive. We just can't allow that which the
12 Statute prohibits.

13 We've tried to strike that balance. I
14 think each of us, given the super majority
15 provisions, have an ongoing responsibility and a
16 serious responsibility to try to vote on these things
17 whenever possible.

18 However, there may be situations where, for
19 a variety of reasons, one would have to recuse. We
20 have provided and tried to strike that balance
21 between looking to Act 71 for guidance, providing a
22 provision where if one of us does have to recuse, the
23 policy provides that we will provide an explanation
24 for that, which will be made a matter of the public
25 record.

1 We have even attempted to go a little
2 farther, and in situations where people believe one
3 of should recuse and we don't, we have provided an
4 opportunity for that person to make his or her
5 objections or suggestions part of the public record.

6 So we have really tried to walk that
7 balance and you know, it all sounds easy. Everybody
8 is for ethics, but as you try to work your way
9 through a number of competing interests, it was
10 difficult; but I think it's a testament to -- if this
11 passes, it will pass effectively by unanimous vote.

12 I think that will be a testament to this
13 Board's willingness to go the extra mile and to
14 commit itself to act in a highly appropriate,
15 transparent, ethical, and forthright manner.

16 CHAIRMAN DECKER: I would like to say
17 something else that Commissioner Coy appropriately
18 pointed out to us today in terms of recusal.

19 Each Board Member has a continuing
20 obligation to vote and do it diligently and promptly
21 and in all fairness.

22 With respect to recusal, that's why we took
23 the road, as you'll see in the policy of recusing as
24 to application, because we have a continuing
25 obligation not only to vote but to deal with each of

1 the others in good faith and in accordance with
2 impartial and unbiased standards and objectivity.

3 If we don't do that, we're not living up to
4 our obligations of good faith and under the Statute,
5 and it subjects us to very serious implications.
6 That's why we've dealt with each application and
7 recusal on each application as a separate matter.

8 COMMISSIONER MARSHALL: Just to point out,
9 Mr. Chairman, this policy requires an ongoing
10 consideration and assessment of whether we have to
11 recuse ourselves. So it's not simply enough to raise
12 the question once, resolve it, and go forward; so
13 that if circumstances change or the facts and
14 circumstances upon which a recusal decision would be
15 made, new facts or circumstances enter the case, the
16 member has -- just resolving it once is not enough.

17 CHAIRMAN DECKER: Again, as we get more
18 comments on this, and I want to turn it over to Sandy
19 and the other members that want to talk about this.

20 As Commissioner Marshall said some time
21 ago, this is a breathing, living document. It's not
22 done forever. If different legislation is passed,
23 we'll deal with that and this will get dealt with
24 separately.

25 Secondly, as time goes on, to the extent

1 that we need to make tweaks and so forth, that will
2 be done; but we think this provides a very terrific
3 basis and foundation for our moving forward.

4 Commissioner Rivers?

5 COMMISSIONER RIVERS: Thank you,
6 Mr. Chairman. I think as a layperson sitting with
7 this organization and watching as we attempt to
8 establish something we could live by, I was really
9 taken aback by the dedication and the commitment of
10 all of those involved.

11 Chip has been very gracious in
12 congratulating others. I think that between he and
13 Commissioner Coy, as well as the rest of the people
14 involved, have done an outstanding job.

15 I can say to you sitting there today that
16 what we had in front of us is something that had a
17 lot of sweat and a lot of blood involved in it.

18 I think a lot of individuals made personal
19 commitments and gave up things that they were
20 particularly interested in so that we can reach this
21 point.

22 I can honestly and truthfully say that I
23 appreciated the activities of all of us in terms of
24 making a document that really strikes the heart of
25 what we're trying to establish, and that is this

1 thing called being fair and equitable in this
2 process.

3 So I just wanted to put my two cents in and
4 say thank you to all of the Board Members as well as
5 to all of the staff who were personally involved and
6 any other individual who had any insight, who gave
7 some insight into this process. Thank you.

8 CHAIRMAN DECKER: Treasurer Casey, did you
9 have a --

10 TREASURER CASEY: Yes. Just by way of
11 follow-up, I think it's been said already, I want to
12 reiterate my comments with regard to commending the
13 Board for a lot of hard work.

14 I think a lot of the Board and the staff
15 worked very hard to get this right. That's the way
16 it ought to be. I think that as a non-voting member,
17 I know a number of our recommendations were
18 implemented and I appreciate that, because I know the
19 people in the Treasury Department took this very
20 seriously to try to play a role that was positive in
21 this process.

22 I think, Mr. Chairman, the last thing you
23 had said about a continuing obligation, I think, with
24 regard to how Board Members comply is very important.

25 I think it's also a continuing obligation,

1 as you said a moment ago, that if there are changes
2 to be made that they be made, and I'm sure Board
3 Members will have those.

4 In the end, I think what is most important
5 is the enforcement of this code. I know that the
6 Board is fully committed. I'm confident that this
7 board will always be committed to fully enforcing and
8 being very tough in the enforcement of the provisions
9 of the code.

10 So it's a lot of hard work. It looks easy
11 from the outside, but I know the Board and staff
12 worked very hard. So it's a good day for this Board.

13 CHAIRMAN DECKER: Thank you, Treasurer. I
14 appreciate it very much.

15 Are there any other comments or questions
16 about it from members of the Board?

17 COMMISSIONER CONABOY: Tad, it's Bill
18 Conaboy.

19 CHAIRMAN DECKER: Yes. Go ahead.

20 COMMISSIONER CONABOY: Thank you very much.
21 Again, I won't take up anymore time. Everything that
22 needs to be said has been said.

23 Again, I just want to echo my gratitude in
24 particular for the personal experience and background
25 and education that each of the members brought to

1 this project; legal, judicial, educational,
2 legislative, government.

3 Expertise was brought to the table in this
4 effort and each member contributed greatly. I also
5 want to thank the staff that brought all of their
6 expertise and experience to the table and people like
7 Treasurer Casey and others that brought their
8 experience to the table.

9 So it's a great day for the Gaming Control
10 Board and for the Commonwealth of Pennsylvania. I'm
11 proud to be a small part of this effort. Again, I
12 thank everyone.

13 CHAIRMAN DECKER: Thank you, Commissioner.

14 Any other comments or questions?

15 We'll take a vote now. All of those in
16 favor of adopting the policy that was reviewed by
17 Commissioner Marshall, please indicate by saying aye.

18 COMMISSIONERS: Aye.

19 CHAIRMAN DECKER: Any opposed?

20 Motion carries.

21 Thank you very much. This was a lot of
22 work. I can tell you that each Board Member
23 contributed a lot to this. When you're writing
24 something like this, you have to be very careful
25 about having examples that don't prove something,

1 that the policy is incorrect on both sides of it, if
2 you will. Again, I want to thank all of the
3 directors for this. Thank you.

4 Moving on, is there any new business to be
5 brought up today?

6 COMMISSIONER COY: Does the Chair have an
7 ethical responsibility to report a natal anniversary?

8 CHAIRMAN DECKER: Yes. I would like to
9 report Chip Marshall's 61st birthday. No, he's 53
10 and I'm 60.

11 COMMISSIONER MARSHALL: I said to the
12 Chairman, the service on this Board sometimes is like
13 being a dog, so I figure one year here is like seven
14 or eight years.

15 CHAIRMAN DECKER: He's only 53. I want to
16 make sure -- it's Greg Fajt that is 61.

17 COMMISSIONER MARSHALL: Where is Greg Fajt?

18 CHAIRMAN DECKER: He's having his hearing
19 checked today. He's looking for assisted living.
20 Okay.

21 With that said, are there any other issues?

22 COMMISSIONER RIVERS: Yes.

23 CHAIRMAN DECKER: Please. Go ahead.

24 COMMISSIONER RIVERS: Yes, Mr. Chairman. I
25 remember attending the last meeting in which I was in

1 attendance by phone and someone made reference to the
2 fact that there was going to be a football game in
3 Detroit last weekend.

4 I just wanted to say that one good thing
5 about the western side of the state is that we know
6 how to deliver. Enough said.

7 CHAIRMAN DECKER: The officials? It was a
8 great victory for the State of Pennsylvania.

9 COMMISSIONER RIVERS: Hail to the Steelers.

10 CHAIRMAN DECKER: Hail to the Steelers. We
11 all agree to that.

12 COMMISSIONER RIVERS: And those of you who
13 are Steelers supporters, it's okay to clap. It gives
14 the eastern part of the state something to shoot for.

15 COMMISSIONER DIGIACOMO COLINS: I'm going
16 to move that we adjourn this meeting.

17 CHAIRMAN DECKER: Thank you. The meeting
18 is adjourned. Thank you very much. Thank you for
19 those participating by phone.

20 (The meeting concluded at 12:00 p.m.)

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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me on the within proceedings and that
4 this is a correct transcript of the same.

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Hillary M. Hazlett, Reporter
Notary Public

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