

PENNSYLVANIA GAMING CONTROL BOARD

PENNSYLVANIA GAMING CONTROL BOARD OFFICE
BOARD ROOM
5TH FLOOR VERIZON TOWER
STRAWBERRY SQUARE
HARRISBURG, PENNSYLVANIA

JULY 8, 2007, 9:04 P.M.

BEFORE:

TAD DECKER, CHAIRMAN (via telephone)
RAY ANGELI (via telephone)
JEFFREY COY (via telephone)
MARY DiGIACOMO COLINS (via telephone)
KENNETH McCABE (via telephone)
GARY SOJKA
SANFORD RIVERS (via telephone)
KEITH WELKS, EX-OFFICIO DESIGNEE (via telephone)

HILLARY M. HAZLETT, REPORTER
NOTARY PUBLIC

1 CHAIRMAN DECKER: Good evening, everyone.
2 I'm Tad Decker. I'm Chairman of the Gaming Control
3 Board.

4 I would like to welcome the Board and all
5 of you to this public meeting. I'm going to ask Paul
6 Resch, our secretary, to call the roll, please.

7 MR. RESCH: Chairman Decker?
8 Commissioner Angeli?

9 COMMISSIONER ANGELI: Present.

10 MR. RESCH: Commissioner Colins?

11 COMMISSIONER DIGIACOMO COLINS: Present.

12 MR. RESCH: Commissioner Coy?

13 COMMISSIONER COY: Present.

14 MR. RESCH: Commissioner McCabe?

15 COMMISSIONER McCABE: Present.

16 MR. RESCH: Commissioner Rivers?

17 COMMISSIONER RIVERS: Here.

18 MR. RESCH: Commissioner Sojka?

19 COMMISSIONER SOJKA: Present.

20 MR. RESCH: Secretary Dennis Wolff?

21 Secretary Tom Wolf?

22 Keith Welks, ex-officio designee?

23 MR. WELKS: Present.

24 MR. RESCH: Chairman Decker?

25 CHAIRMAN DECKER: Did you call my name?

1 MR. RESCH: Chairman Decker?

2 CHAIRMAN DECKER: Here.

3 Thank you, Paul.

4 A quorum of the Board is present.

5 Therefore, the meeting is called to order. I would
6 like to welcome the Board members and staff or any
7 person who is going to make presentation who is going
8 to attending -- anyone who is going to make a
9 presentation identify themselves before speaking.
10 Lastly, I would like to remind everyone to shut off
11 their phones and blackberries.

12 Let's start with the Pledge of Allegiance,
13 and since Commissioner Sojka is there, would you
14 please lead us in the Pledge?

15 COMMISSIONER SOJKA: I would be pleased to.
16 (Pledge of Allegiance.)

17 CHAIRMAN DECKER: Thank you. By way of
18 announcements, the Board held Executive Sessions
19 before this meeting tonight, as well as on June 22nd,
20 July 2nd, 3rd, and 6th to discuss various personnel
21 issues and other non-business matters. No business
22 was conducted at these sessions.

23 New business. As you know, we are here
24 tonight as a result of the Commonwealth's current
25 budget impasse and to discuss and consider the impact

1 of the potential furlough on the Department of
2 Revenue employees that operate and monitor and
3 supervise the Central Control Computer System to
4 which all slot machines in Pennsylvania are required
5 by our Gaming Act to be linked.

6 We're going to hear from a number of
7 individuals, particularly our Executive Director,
8 Anne Neeb, and our Chief Counsel, Frank Donaghue; but
9 I understand that we have present with us tonight a
10 representative or some representatives of the
11 casinos, who or operators who are going to make a
12 presentation concerning this issue to the Board.

13 If it's appropriate, if Anne or Frank could
14 pick this up now since I'm not there and introduce
15 whoever it is that's going to make this presentation,
16 and the Board has agreed to allow that. Normally, we
17 don't. In this case, in light of the circumstances,
18 we felt it was appropriate to receive such a
19 presentation.

20 Anne or Frank?

21 MR. DONAGHUE: Sure. This is Chief Counsel
22 Frank Donaghue, Mr. Chairman. Before us is Mr. Bill
23 Downey, who would like to make a presentation to the
24 Board.

25 Bill, I'll turn it over to you and if you

1 want to introduce anyone else who may make a
2 presentation, you may do so.

3 MR. DOWNEY: Thank you, Frank. I think I
4 will refrain from introducing. We have with us
5 counsel and various representatives from each of the
6 five licensees. I'll dispense with introducing
7 everyone with us.

8 I have -- Mr. Chairman, I have prepared
9 some remarks. Before I get to them, I just want to
10 address sort of a general procedural matter just to
11 point out that in terms of our presentation tonight,
12 we have made a series of assumptions based upon our
13 correspondence and communication with your staff.

14 What we have tried to do is come to some
15 conclusions about precisely what it is the Gaming
16 Control Board anticipates its response might be in
17 the event that the furlough that we're all so keenly
18 aware of actually comes to fruition.

19 As a result, my prepared comments are going
20 to focus primarily on what we see as the two primary
21 indications that we have received.

22 The first is that in some fashion the
23 Gaming Control Board might take steps to effectively
24 shut down gaming. We're not precisely certain what
25 form that might take but we are -- we have prepared

1 remarks to address what we see as the two primary
2 alternatives.

3 MR. DONAGHUE: Bill, not to interrupt but
4 to make it clear for the record, you are representing
5 all five operators?

6 CHAIRMAN DECKER: Thank you.

7 MR. DOWNEY: Yes. In fact, that's part of
8 my prepared remarks.

9 CHAIRMAN DECKER: That's not a problem.

10 MR. DOWNEY: The second focus is the -- I
11 guess the practical and legal impact of the
12 unavailability of those Department of Revenue
13 employees who have been tasked to deal with the
14 Central Control Computer System.

15 So what we will do in the prepared remarks
16 is basically just walk through each of those areas
17 and just to come to the punch line sort of quickly,
18 we're going to ask that the Board take no action in
19 contemplation of this furlough.

20 Having said that, I also want to thank
21 staff who have been talking and working with us over
22 the weekend to kind of get us up to speed with where
23 things were headed.

24 MR. DONAGHUE: Before you read, for all of
25 the Board members, I want to make sure all of the

1 Board members can hear the presentation.

2 CHAIRMAN DECKER: Not a problem.

3 MR. DOWNEY: With that, I'm going to get
4 into my prepared remarks. Good evening, Mr. Chairman
5 and members of the Board. My name is Bill Downey.
6 I'm a partner in the law firm of Fox Rothschild.

7 I'm here this evening to speak on behalf of
8 each of the Commonwealth's five licensed and
9 operating Category 1 casinos. Specifically, they are
10 Chester Downs and Marina, LLC, Downs Racing, LP,
11 Greenwood Gaming and Entertainment Inc., Presque
12 Isle Downs, Inc. and Washington Trotting Association,
13 Inc.

14 While we regret the need for this evening's
15 appearance, we appreciate the Board's invitation to
16 address, among other things, the impact of the
17 much-publicized, planned furlough of the
18 Commonwealth's Department of Revenue employees
19 assigned to the Central Control Computer System.

20 However, we're also here today to speak on
21 behalf of the Commonwealth or perhaps more precisely
22 the citizens of the Commonwealth, who were sold on
23 the benefits of gaming in Pennsylvania, such as
24 property tax relief, economic development, tourism
25 relief, support for the horse and harness racing

1 industries, job creation, among many others, and many
2 of whom have become dependent upon the casinos for
3 their livelihood.

4 Collectively, the five casinos directly
5 employ approximately 3,500 of these hard-working
6 Pennsylvanians and are responsible for the employment
7 of countless others in ancillary industries,
8 including those unfortunate Commonwealth employees,
9 including the Department of Revenue employees, who
10 find themselves in what I have to imagine is an
11 unwanted spotlight.

12 The threatened shutdown of the casinos will
13 most assuredly hurt the casinos themselves, but the
14 shutdown will affect many other Pennsylvanians in a
15 very specific and negative way.

16 The casinos generate, in addition to their
17 own profits, approximately \$1.7 million in taxes and
18 assessments to the Commonwealth every day they are in
19 operation.

20 In addition, the casinos pay their
21 employees hundreds of thousands of dollars per day
22 and spend tens of thousands a day in Pennsylvania on
23 a wide array of goods and services, all providing a
24 further and significant boost to the Commonwealth's
25 economy, tax revenues, and jobs.

1 We ask that the Board refrain from taking
2 any action that would result in the shutdown of the
3 casinos, because we believe that any such action
4 would be legally improper and because the
5 uninterrupted operation of the casinos is without a
6 doubt in the best interests of all parties; the
7 Commonwealth, its constituent municipalities, its
8 citizens, the casino licensees you regulate and the
9 investment community that has actively participated
10 in the financing of the operations of these
11 licensees.

12 I'm going to move now specifically to the
13 power to shut down. Through various conversations
14 and correspondence with GCB staff, we understand that
15 the Board is considering the propriety of the
16 issuance of an order, whether it be in the form of a
17 temporary suspension order or a cease and desist
18 order, as a means to shut down or at least maintain a
19 shutdown of the casinos.

20 The Act, specifically 1209(b) requires good
21 cause to suspend a license. A review of the basis
22 for suspension contained in the Act and in the regs
23 reveal that all such bases are premised upon the
24 conduct of the subject licensee.

25 None relate to politics, the budget

1 process, a budget impasse, or the furlough or other
2 absence of Department of Revenue employees and,
3 therefore, none of such bases could constitute good
4 cause sufficient to suspend a license.

5 A review of other potential, relevant
6 sections of the Act and the regulations evidences a
7 similar legislative intent; that is, to empower the
8 Board to take action against a problem casino but not
9 to empower the Board to arbitrarily shut down the
10 casinos, each of which has paid a \$50 million fee for
11 the privilege of operating in Pennsylvania.

12 For example, under Section 1207(1) of the
13 Act, the Board can suspend a license only if the
14 licensee has furnished false or misleading
15 information to the Board or the licensee has failed
16 to comply with the provisions of the Act or
17 regulations and the Board finds that it would be in
18 the public interest to suspend the license.

19 Similarly, under Section 1326(b) of the Act
20 in the context of renewal of licenses, the Board is
21 authorized to suspend licenses at its discretion if
22 it determines the applicant or any of its officers,
23 directors, owners, or key employees is in violation
24 of any provision of the Act or regulations, that the
25 applicant has furnished to the Board false or

1 misleading information, or that the information
2 contained in the applicant's initial application or
3 any renewal application is no longer true and
4 correct.

5 The casinos are and remain in full
6 compliance with the Act and regulations, and no
7 casino has furnished false or misleading information
8 to the Board.

9 All information provided to the Board, as
10 updated from time to time, remains accurate.
11 Moreover, in view of the tremendous impact upon the
12 casinos, their employees and vendors, and the
13 Commonwealth and its citizens, all, as discussed
14 earlier, suspension of the licenses or any other
15 action that shuts down the operation of the casinos
16 would be directly adverse to the public interest, not
17 in it.

18 The Act similarly does not empower the
19 Board to shut down the casinos using a cease and
20 desist order.

21 In fact, the Act itself does not even
22 provide the Board with general cease and desist
23 power. The only cease and desist power conferred
24 upon the Board by the Act is found at 1518. Section
25 1518 is titled Prohibited Acts and Penalties.

1 Section 1518(a) describes a series of acts
2 that are used in criminal acts in connection with the
3 business of gaming in the Commonwealth.

4 Section 1518(b) describes criminal
5 penalties and fines applicable for violations of
6 certain other provisions of the Act.

7 Section 1518(c) grants the Board -- grants
8 the Board the ability to impose a series of
9 administrative sanctions to be used in the face of a
10 violation of law.

11 Again, the casinos have not violated any
12 laws and, therefore, the use of this sanction to
13 close their doors would be contrary to the plain
14 letter of the law and the clear intent of the
15 legislature.

16 The Board's own regulations, likewise, do
17 not authorize the shutdown of casinos by license
18 suspension or issuance of a cease and desist order
19 under the present circumstances.

20 Under 421.2(a) of the regulations, the
21 Board may, upon the request of the Office of
22 Enforcement Counsel, in an emergency suspend a
23 license or issue a cease and desist only if the order
24 is necessary to preserve the public health, welfare,
25 safety, or integrity of the gaming in this

1 Commonwealth, and the Board determines that the
2 licensee has been charged with or convicted of
3 certain enumerated crimes, the licensee has failed to
4 pay required assessments or to satisfy its tax
5 obligations, or the action that is necessary to
6 prevent or cure a violation of the Act, the
7 regulations or other laws.

8 As before, the Board has contemplated
9 action will be adverse to rather than in the best
10 interests of the public health, welfare, and safety
11 and the integrity of the gaming in Pennsylvania and,
12 moreover, none of the criteria from Section 421.2(a)
13 is applicable.

14 Finally, in the ordinary course, the Board
15 under Section 421.2 of the regulations may suspend a
16 licensee's license only if the licensee has violated
17 the Act or the regulations, has been disqualified
18 under the criteria contained in the Act, has
19 materially departed from a representation made in the
20 application or renewal, or has failed to comply with
21 applicable laws and regulations.

22 Again, none of these criteria apply here
23 and the Board's power is limited by the public
24 interest.

25 In sum, in the absence of authorization

1 from the legislature to suspend the casino's licenses
2 or to issue an order to cease and desist operating,
3 the Board must continue to allow the casinos to
4 operate in accordance with the law and it is in the
5 best interests of the Commonwealth that they do so.

6 CHAIRMAN DECKER: Thank you.

7 MR. DOWNEY: I'm going to shift the focus
8 to the Department of Revenue employees. The sole
9 reason that the Board is even contemplating the
10 aforementioned actions is the Department of Revenue
11 has threatened to furlough somewhere between 8 and 16
12 employees who are related, however indirectly, to the
13 Central Control Computer System, which, in fact, is
14 operated by GTECH.

15 In point of fact, the Department of Revenue
16 employees are not necessary to the operations of the
17 industry or required by statute.

18 With respect to the Central Control
19 Computer System, the Act, Section 1323, requires only
20 that the Department of Revenue have overall control
21 of the slot machines, all slot machines be linked to
22 the Central Control Computer System, and the system
23 be under the control of the Department of Revenue and
24 accessible by the Board.

25 Neither the Act nor the regulations require

1 that the Department of Revenue personnel perform
2 these functions.

3 In fact, in accordance with the Act, the
4 Department of Revenue has outsourced these functions
5 to GTECH, the gaming technology company that provides
6 the Commonwealth with the Central Control Computer
7 System and the personnel necessary for the operation.

8 Because GTECH personnel are not subject to
9 furlough, the Department of Revenue will continue to
10 meet its statutory obligations even if a budget is
11 not enacted and the Department of Revenue employees
12 are furloughed.

13 An examination of the GTECH contract
14 demonstrates that the Department of Revenue employees
15 do not perform any function relevant to the continued
16 operation of the Central Control Computer System.

17 GTECH personnel, not the employees of the
18 Department of Revenue, are responsible for operating
19 and maintaining the system and all of the data that
20 it collects.

21 In fact, on Friday, during argument on a
22 petition for review filed by the five licensed
23 casinos, the Commonwealth admitted that, once
24 furloughed, the Department of Revenue employees would
25 direct the GTECH take affirmative action to disable

1 the slot machines.

2 Nonetheless, while the Department of
3 Revenue employees remain on furlough, the Central
4 Control Computer System would continue to operate
5 under the supervision and control of GTECH.

6 The argument that these employees are
7 somehow essential to the system is, thus,
8 fundamentally flawed.

9 The absence of any mention of the
10 Department of Revenue employees in the Act and the
11 regulations or of the shutdown of the gaming industry
12 if they cannot work demonstrates the truth be told,
13 that these employees are neither essential to the
14 operation of the system nor required by statute.

15 Additionally, the operability of the
16 Central Control Computer System itself is neither
17 necessary or required.

18 In fact, the Act contemplates that the
19 Central Control Computer System may become
20 inoperative.

21 Section 1323(a)(6) and the Department of
22 Revenue contract with GTECH require that the data on
23 the Central Control Computer System be stored in
24 multiple locations to avoid a total loss due to
25 failure of this technology.

1 All data is maintained by GTECH on an
2 off-site backup server, which is capable of acting as
3 the primary server and by each of the casinos
4 themselves.

5 Moreover, neither the Act nor the
6 regulations state that the casino must shut down if
7 the Central Control Computer System is not
8 operational and if the legislature intended, they
9 easily could have said so.

10 Further, the casinos have other independent
11 obligations under the Act to maintain revenue data
12 and other information. Specifically, Section 1322(b)
13 requires the casinos maintain accurate financial
14 records, including any financial event that occurs in
15 the operation of a slot machine.

16 Thus, there is virtually no danger that any
17 financial information will be lost in the event of a
18 furlough of the Department of Revenue employees, both
19 as a result of this independent obligation under
20 Section 1322 and the redundant capability of the
21 Central System.

22 In sum, to the extent that the Board is
23 contemplating action to shut down the casinos due to
24 the furlough of the Department of Revenue employees
25 and/or the loss of the Central Control Computer

1 System, such action would be misguided and
2 unnecessary because the employees and, in fact, the
3 system are neither necessary nor required.

4 In conclusion, any action by the Board
5 taken to shut down the operations of the five
6 operating casino licensees would be legally improper,
7 unnecessary, and directly adverse to the best
8 interests of the Commonwealth and its citizens.

9 We respectfully request, therefore, that
10 the Board refrain from taking action, be it
11 anticipatory or otherwise, that would result in the
12 shutdown of the casinos. Thank you.

13 CHAIRMAN DECKER: Thank you. We'll go to
14 questions now. Start with Commissioner Colins. Do
15 you have any?

16 COMMISSIONER DIGIACOMO COLINS: Yes, I do
17 have a couple of questions. I am looking at Section
18 1323 right now. I have been reading it as counsel
19 has been making argument.

20 I am trying to see and cannot find any
21 language in 1323, maybe counsel can guide me, which
22 directs that GTECH or any other independent private
23 company shall control the Central Control Computer
24 System. Is there any language in 1323 that indicates
25 that?

1 MR. DOWNEY: That a private company would
2 control the system? No, Judge Colins, I don't think
3 there's any place in the Act that you would find
4 that.

5 I don't think we would argue that GTECH
6 controls the system is to the sense that 1323
7 requires the Department of Revenue must do so.

8 COMMISSIONER DIGIACOMO COLINS: Right. And
9 the Department of Revenue under 1323 is given the
10 power to do a contract, hire a company to develop the
11 system, and the system to meet the criteria of
12 1323(a); is that right?

13 MR. DOWNEY: Yes, in part, as far as it
14 goes, that's correct.

15 COMMISSIONER DIGIACOMO COLINS: Okay. And
16 as I understand 1323 to specifically say that the
17 Central Control Computer is to be employed by the
18 Department; and also, I see that it is a system that
19 is controlled by the Department and accessible to the
20 Board. Do you agree that that language is in that
21 section?

22 MR. DOWNEY: I do.

23 COMMISSIONER DIGIACOMO COLINS: And there
24 is a contract between GTECH and between Revenue, and
25 the Gaming Board is not a party to that contract; is

1 that correct?

2 MR. DOWNEY: That is also correct.

3 COMMISSIONER DiGIACOMO COLINS: And so
4 basically, the oversight of the Central Control
5 Computer System pursuant to the language of 1323(b)
6 rests with Revenue; is that correct?

7 MR. DOWNEY: Well, no. I think -- I want
8 to sort of head on address the issue that I think
9 we're sort of moving around and that is the issue of
10 control.

11 Let me be perfectly clear. No one for whom
12 I sit here today is going to take the position that
13 the Department of Revenue is not statutorily mandated
14 to control the Central Control Computer System.

15 COMMISSIONER DiGIACOMO COLINS: Okay.

16 MR. DOWNEY: I think where we're going to
17 have a disagreement, if I can sense where we're
18 headed, is what that means, what it means for the
19 Department of Revenue to control the system. Judge,
20 as you're well aware --

21 COMMISSIONER DiGIACOMO COLINS: Here is
22 what I'm getting at, considering the reality of what
23 may happen tomorrow morning where the Department of
24 Revenue will be furloughing all employees, the
25 reality of that situation is that GTECH, if the

1 Central Computer Control System continues to operate,
2 that GTECH would be controlling the system; isn't
3 that true? Isn't that what would be happening if all
4 of the Revenue employees are furloughed or Revenue is
5 shut down?

6 MR. DOWNEY: I think we're going to use the
7 word control because I think you use it in two
8 different senses. The fact of the matter is that
9 right now in a real colloquial sense, GTECH controls
10 the system.

11 CHAIRMAN DECKER: Excuse me. I have to --
12 who does GTECH report to?

13 MR. DOWNEY: DOR, Department of Revenue.

14 CHAIRMAN DECKER: Keep going.

15 MR. DOWNEY: The --

16 COMMISSIONER DiGIACOMO COLINS: I think the
17 question is who ultimately has the last word, is it
18 GTECH or Department of Revenue pursuant to the
19 language of the statute and according to the statute.
20 Don't you have to agree that the last word of the
21 control rests with Revenue?

22 MR. DOWNEY: Yes.

23 COMMISSIONER DiGIACOMO COLINS: Okay.

24 Thank you.

25 CHAIRMAN DECKER: Go on. Commissioner

1 Angeli, any questions?

2 MR. DONAGHUE: Commissioner Angeli?

3 CHAIRMAN DECKER: Ray?

4 COMMISSIONER COY: Mr. Chairman, I have --

5 CHAIRMAN DECKER: I was going to go to
6 Commissioner Coy next. Please, go ahead.

7 COMMISSIONER COY: Thank you, Mr. Chairman.

8 Mr. Downey, I want to make sure I
9 understood something you said and maybe I did
10 misunderstand it.

11 Did you draw a distinction or attempt to
12 draw a distinction between these Department of
13 Revenue and other employees of the Department of
14 Revenue with regard to their essential
15 qualifications?

16 MR. DOWNEY: Could I ask you to phrase the
17 question again?

18 COMMISSIONER COY: I thought I heard you
19 say someplace, and maybe I misunderstood it and I
20 will say it again, that you attempted to
21 differentiate these employees that are involved with
22 monitoring and controlling and so on, the Central
23 Computer System as opposed to other employees of the
24 Department of Revenue. Did I hear that?

25 MR. DOWNEY: I don't believe so.

1 COMMISSIONER COY: Okay. Because I really
2 didn't understand that part, if I did. And I guess
3 my next question is more of a general question. That
4 would be how you feel the Board could guarantee to
5 the people of the Commonwealth, both folks who game
6 and folks who would hopefully benefit from property
7 tax reductions, how could we guarantee the integrity
8 of this system without the participation of these
9 employees?

10 MR. DOWNEY: Frankly, no more so than we
11 can today. There is a prospect --

12 COMMISSIONER COY: So they do nothing?

13 MR. DOWNEY: I didn't say that.

14 COMMISSIONER COY: Okay.

15 MR. DOWNEY: There's a prospect that anyone
16 in the system can misbehave. The question is if the
17 Commonwealth was put in a position where they are
18 prejudiced, I think we have to assume is a temporary
19 leave to certain of the employees responsible for
20 that review obligation or at least in our case, the
21 audit function, perhaps.

22 COMMISSIONER COY: You're asserting that
23 the Board should not believe that in your words that
24 there would be more misbehavior without those
25 employees being there than there would if they would

1 be there?

2 MR. DOWNEY: I think I would go further,
3 assuming the return to work of those employees, all
4 of the data on the basis of which they could
5 determine, whether they be sitting there or not, that
6 there was misbehavior would remain ready for review
7 upon their return.

8 COMMISSIONER COY: So to take your argument
9 a step further, we could have them show up one day a
10 year and review all of the actions for a year and
11 that would satisfy the requirement, according to you?

12 MR. DOWNEY: You could make the case. DOR
13 has an obligation to perform various functions. As
14 you know, they invoice, they collect, and move money.
15 There are -- there are other obligations that they
16 have under the Act.

17 What we focus on is their relation to the
18 operability of the system and the casinos proper and
19 whether, in fact, they should be in their chairs for
20 this system to be eligible to operate.

21 COMMISSIONER COY: I understand now what
22 you're saying. I guess I just have a hard time
23 understanding that -- I almost used the word believe
24 that -- whatever we want to use. I have a hard time
25 comprehending the fact that they could be as diligent

1 in their function on an annual audit as they could be
2 on a daily overview of performance.

3 MR. DOWNEY: I don't think I would argue
4 with this.

5 COMMISSIONER COY: Thank you, Mr. Chairman.

6 CHAIRMAN DECKER: Thank you. I think next
7 up is Commissioner McCabe.

8 COMMISSIONER McCABE: Thank you,
9 Mr. Chairman. The first thing I want to address is
10 you're beginning arguments about suspending the
11 license. I think none of us want to take any -- none
12 of us want to see the casino shut down, but one of
13 the things is we're not -- I don't think we're going
14 to suspend anybody's license.

15 I think we need to differentiate what is
16 happening. So nobody's license is going to be
17 suspended if these people get furloughed.

18 Do you have any comment on that, because I
19 just don't think we're going to be suspending any
20 casino's license?

21 MR. DOWNEY: That is good news.

22 COMMISSIONER McCABE: But you still may
23 have to stop gambling.

24 MR. DOWNEY: Gives with one hand and takes
25 away with the other. I understand.

1 COMMISSIONER McCABE: I think it's
2 important for their own license to be able to say
3 that their license has never been suspended.

4 I agree with what the other Commissioners
5 have been saying about with the overall control.
6 GTECH is the workers, they manage the system but the
7 overall control, I see, is being the responsibility
8 of DOR and not GTECH's.

9 MR. DOWNEY: Can I address that again
10 because I want to make sure we're saying the same
11 thing here?

12 DOR has an obligation to control the
13 system. There are all kinds of ways we control
14 things; and in this context specifically, DOR has
15 control of the system by virtue of the fact that they
16 have roughly an inch and a half contract with GTECH
17 describing in excruciating detail what GTECH will do
18 in terms of operation of that system.

19 There is -- I would suggest to you that
20 there is no argument that just by virtue of that
21 contract and the contents of that contract, DOR
22 maintains control of that system.

23 That is separate and distinct from saying
24 someone controls in the sense that they have got to
25 be sitting in the chair pushing the buttons.

1 COMMISSIONER McCABE: Isn't that what the
2 law calls for then because that's what we have to do,
3 we have to enforce and regulate the law and the
4 rules. We have got to go by the law.

5 If the law says that DOR has to control it
6 and they're not controlling it, then we're forced to
7 take some action.

8 MR. DOWNEY: I don't think so because right
9 now the fact of the matter is DOR does not sit in the
10 chair and push the buttons and that's okay.

11 In fact, the statute contemplates or would
12 mandate that they contract out these services.
13 There's -- I mean, there's case law -- although I
14 don't want to get this deep into it. There's case
15 law in the Commonwealth that supports the proposition
16 that control doesn't mean you sit behind the wheel.

17 The fact of the matter is that's the
18 methodology that they have employed to control the
19 system.

20 COMMISSIONER McCABE: I wish somebody from
21 DOR was present so we could ask them exactly what
22 their people do. Do you know exactly what do the DOR
23 people do?

24 MR. DOWNEY: Well, it's interesting you
25 raise that. At the conclusion of this portion of the

1 meeting, I'm going to move into evidence or ask to be
2 moved into evidence five affidavits. Four of those
3 affidavits -- we couldn't get an affidavit from the
4 fifth in time -- are basically going to talk about
5 what they do with the operations on a rolling basis.

6 We are going to assert that, put aside
7 their financial function in terms of the invoicing
8 and billing and that type of procedure, but no one
9 from the property in the context of the operation of
10 the central server system and the day-to-day back and
11 forth between server system, property, and BIE with
12 respect to the actual slot machine assets ever comes
13 into contact with DOR. They deal solely with GTECH.

14 COMMISSIONER DiGIACOMO COLINS: Counsel,
15 could I interrupt for just a minute?

16 CHAIRMAN DECKER: Sure.

17 COMMISSIONER DiGIACOMO COLINS: Ken, if you
18 don't mind.

19 COMMISSIONER McCABE: Please.

20 COMMISSIONER DiGIACOMO COLINS: It seems to
21 me that your argument concerning control is
22 misguided, because you just said there's case law
23 that says you may have -- you don't have to be
24 sitting behind the wheel and driving the truck or
25 whatever to have control, and I agree with that.

1 It seems to me the ultimate control is with
2 the entity who has the legal authority to declare
3 whether or not the terms of that contract are being
4 met or not and whether or not the company, GTECH, is
5 performing in accordance with the terms as Revenue
6 expects them to perform.

7 It seems to me that ultimately there's no
8 question that Revenue has control. Just because
9 Revenue might not be pushing the buttons on the
10 computer, I think that begs the question of what
11 control really is.

12 Control is the ultimate power, and it's
13 clear from the statute that that is what Revenue has.
14 That's my comment; and you can respond to that, if
15 you would like.

16 MR. DOWNEY: And I don't think that we have
17 argument in that respect, and let's get a little more
18 specific about the Revenue employees that we're
19 talking about.

20 Commissioner Coy, I think it was -- I may
21 have misunderstood your question earlier. DOR is not
22 locking the doors and going home. The vast majority
23 of DOR employees are staying on the job.

24 The fact of the matter is there are a
25 handful that are going to go home that are

1 specifically tasked to the server system.

2 CHAIRMAN DECKER: But is that our decision
3 to make as to which employee should be staying on the
4 job?

5 MR. DOWNEY: No, sir. Absolutely not; and
6 in fact, I wish that it were. I would be asking you
7 for injunctive relief. The fact of the matter is to
8 the extent that one of the concerns or, in fact, one
9 of the arguments goes you can't operate because
10 there's no DOR employee standing there in case some
11 anomaly outside of the contemplation of the agreement
12 were to occur.

13 I respectfully submit to you that it is
14 highly likely that that's above the pay grade of the
15 employees that are going to be sitting there anyway.

16 CHAIRMAN DECKER: Let me ask you a question
17 while you're on that line of thinking or that trend
18 of thought for a second.

19 In the event there was some issue that
20 happened, let's assume we bought into your argument
21 that we don't need DOR to run this, suppose something
22 happens to the Central Computer System, who has the
23 authority to do something to fix the Central Control
24 System?

25 Are you saying GTECH makes all of those

1 decisions on their own? We certainly don't have that
2 authority under the statute.

3 How do you get around the prospect when DOR
4 isn't there to supervise and control it in accordance
5 with what we read is 1323(a) of the statute?

6 MR. DOWNEY: I think the statute -- this is
7 unfortunate that we don't have a better handle on the
8 DOR. I think the answer is DOR, they're not gone;
9 and the ultimate policymakers of DOR, we know will
10 still be sitting in their seats.

11 Those messages can continue to be
12 communicated through GTECH to the ultimate
13 policymakers at DOR. Whether or not they choose to
14 respond, obviously, we can't speak to that; but it is
15 not the case that DOR is shackling the doors.

16 CHAIRMAN DECKER: Who do we deal with in a
17 situation like that? People who have no familiarity
18 in the system and have nothing to do with it? Does
19 that make any sense?

20 MR. DOWNEY: I don't know that those are
21 all the same thing.

22 CHAIRMAN DECKER: No familiarity with the
23 operation. I think you're underestimating that
24 someone is there supervising what GTECH does. Maybe
25 not on a minute to minute but they are doing

1 supervision.

2 MR. DOWNEY: All I can offer you is what we
3 received from the property and in terms of examples,
4 the one that I can provide you that comes to mind is
5 the snowstorm this February.

6 I don't know who was there, but we weren't
7 invoiced and none of the properties were invoiced for
8 a period of two days during that process. Things
9 seemed to run fine.

10 We ultimately got an accounting. We
11 received -- you know, we received our invoice two
12 days later but the inclement weather --

13 COMMISSIONER COY: It's Jeff Coy again. I
14 guess the question then, Counselor, would be did you
15 know they weren't there at that period in time? Did
16 the operators know they weren't there during those
17 couple of days?

18 MR. DOWNEY: I suspect that they did not.
19 Although --

20 COMMISSIONER COY: So they didn't act any
21 differently and there wasn't any more reason to feel
22 that there would have been, you know, malfunctions at
23 that point?

24 COMMISSIONER McCABE: Am I still on?

25 CHAIRMAN DECKER: Yes, Ken.

1 that we're confronted with as to our
2 responsibilities.

3 I mean, we feel we have a fiduciary
4 responsibility to make sure that what you read in the
5 Act does, in fact, come to fruition; and this is
6 where, as I listen to everyone talk, it just seems
7 more and more relevant that the Department of Revenue
8 has direct control, contrary to what you may think,
9 because in our deliberations we have always worked
10 under that assumption. And in the process, there's
11 been certain aspects of it that we basically said
12 that's their responsibility and we should not
13 infringe upon their responsibility; and I think you
14 have at least in my eyes, I haven't heard anything to
15 the contrary that says as it relates to the Central
16 Computer System that they have direct and independent
17 control.

18 Now, did I -- did I miss something that you
19 were saying that said that's not true?

20 MR. DOWNEY: That they have direct control?

21 COMMISSIONER RIVERS: Again --

22 MR. DOWNEY: As in --

23 CHAIRMAN DECKER: That's not what the
24 statute says. It says the Department should have
25 overall control. I think what Commissioner Rivers is

1 asking, are you contesting that?

2 MR. DOWNEY: That the Department have
3 overall control? I'm not contesting that that is
4 what the statute requires.

5 COMMISSIONER RIVERS: If that is the case,
6 how can you say that if they're saying that these up
7 to 16 people are, in fact, the people responsible for
8 the DOR's communication and you're saying that
9 they're not needed, I mean, how can you make the
10 decision that they made the decision that, yes, they
11 are the central employees as it relates to this
12 process?

13 MR. DOWNEY: I mean, I would love to have
14 the declaration of essential. I'm not going to argue
15 -- I would like to have that out there on the
16 Governor's list. Unfortunately, we're not in that
17 position.

18 COMMISSIONER RIVERS: Right.

19 MR. DOWNEY: Let's consider the two general
20 areas of responsibility. The first is the overall
21 control as the Chairman cites on the system.

22 The second is this audit and financial
23 function relating to the movement of your tax
24 revenues.

25 With respect to overall control, I -- quite

1 frankly, I don't think it's a close call. They have
2 elected to control the system by employing someone
3 through a contractual relationship to do X, Y, and Z.
4 Again, it is detailed in excruciating minutiae in the
5 agreement that they have with GTECH.

6 CHAIRMAN DECKER: Suppose GTECH defaulted
7 on the agreement, wouldn't DOR be in the position of
8 having to either run it themselves or get someone
9 else?

10 Isn't it their responsibility at the end of
11 the day if they're not there to deal with all of
12 that?

13 MR. DOWNEY: DOR would have to declare a
14 default.

15 CHAIRMAN DECKER: If they're not there to
16 do that, who would in that possibility? The
17 legislature is not entitled to do it. The casinos
18 are not entitled to do it.

19 MR. DOWNEY: When you say there --

20 CHAIRMAN DECKER: Who is -- the people who
21 have the familiarity with running or overseeing these
22 slot machines because they have not been there,
23 furloughed, dismissed, whatever, who is going to do
24 that?

25 MR. DOWNEY: Again, just to be very

1 specific, highly unlikely, I think you would agree
2 that anybody sitting there or whatever there is to
3 declare a default --

4 CHAIRMAN DECKER: Why not? We had some
5 discussions about GTECH. You say it's impossible to
6 be in default.

7 MR. DOWNEY: I didn't. I said it is highly
8 unlikely anyone from DOR would have the authority to
9 declare a default. To the extent your question --

10 CHAIRMAN DECKER: Who do you anticipate
11 would? There are only two parties to this contract,
12 aren't there? The Governor isn't a party to the
13 contract. The legislature is not a party.

14 MR. DOWNEY: That is correct. We're
15 sending anywhere between 6 and 18 members packing for
16 some period of time. It is highly unlikely that any
17 of those 6 or 18 members are in a pay grade where
18 they're going to issue a default notice to GTECH.

19 CHAIRMAN DECKER: I don't know. You say
20 that, but I'm not sure that's the case. I'm not sure
21 that anyone would be in a position to claim the
22 default.

23 MR. DOWNEY: That's getting a little bit of
24 a different question.

25 CHAIRMAN DECKER: I think it's exactly the

1 same question. How would you get to the point of
2 saying they're in default? Who would administer and
3 who would deal with that if GTECH walked away from --

4 MR. DOWNEY: Who would observe the default?
5 You're asking who would observe the default?

6 CHAIRMAN DECKER: Who would say there was
7 one or if GTECH just walked away and said we're not
8 going to live with this contract anymore, we're going
9 to walk away?

10 MR. DOWNEY: At this point, I don't know.
11 We have our hands around the nuisance with the chain
12 of command at DOR, but that strikes me with where the
13 decisions come from.

14 CHAIRMAN DECKER: The secretary of --

15 COMMISSIONER DIGIACOMO COLINS: One thing
16 is clear --

17 CHAIRMAN DECKER: The Department of Revenue
18 would go in and start operating all of the machines
19 themselves.

20 MR. DOWNEY: They don't operate the
21 machines now.

22 CHAIRMAN DECKER: If GTECH leaves, are you
23 talking to the skeletal staff, the people dealing
24 with the taxes? Are they the people --

25 MR. DOWNEY: My understanding is the large

1 majority of DOR remains at work, but bluntly one of
2 our questions, why wouldn't they be retasked and, in
3 fact, what we sort of noodled as we --

4 CHAIRMAN DECKER: So anyone can run a
5 Central Control System?

6 MR. DOWNEY: I don't know that anyone could
7 run a Central Control System but anyone could, we
8 believe, continue the data and produce the
9 invoices to fund.

10 CHAIRMAN DECKER: Anyone at Department of
11 Revenue could to do that? Is that what you're
12 saying? There's no training?

13 MR. DOWNEY: I'm not going to go that far.

14 COMMISSIONER DIGIACOMO COLINS: And I'm
15 thinking -- that might be your argument with respect
16 to, you know, what type of decision Revenue can or
17 cannot make but with respect to the Board?

18 I mean, don't you think it's clear that the
19 Board has no privity in this contract and the
20 decision maker as to whether or not GTECH should
21 close down the Central Computer System and keep it
22 operating or change certain things that the party has
23 the right to do that is Revenue, correct?

24 MR. DOWNEY: That's absolutely correct and,
25 in fact, that's the basis for their being joined.

1 COMMISSIONER DiGIACOMO COLINS: Let me get
2 to my next question and then I'll stop. If that
3 power rests with Revenue and Revenue -- were to say
4 shutting down in Revenue, we are not going to be
5 operating GTECH, you must close up. You must close
6 down the Central Computer System then, at that point
7 the Board -- it's not the Board's decision but the
8 Board must -- you know, it's not discretionary and
9 the Board would have to close down the casinos; would
10 they not?

11 MR. DOWNEY: I don't think so because if at
12 the end of the day and --

13 COMMISSIONER DiGIACOMO COLINS: We don't
14 tell GTECH to keep operating, do we?

15 MR. DOWNEY: No, I don't believe you do.
16 Remember that GTECH is not going home at the end of
17 the day here.

18 CHAIRMAN DECKER: Who decides that?

19 COMMISSIONER DiGIACOMO COLINS: Who said
20 that?

21 MR. DOWNEY: GTECH said that as they sat in
22 the conference room on Friday morning.

23 CHAIRMAN DECKER: GTECH is going to operate
24 the machinery under the supervision of Department of
25 Revenue.

1 MR. DOWNEY: DOR --

2 CHAIRMAN DECKER: Are you representing that
3 to us?

4 MR. DOWNEY: I'm representing that
5 representatives of DOR that sat in this conference
6 room told us that the system would not, quote, be
7 disabled but that the machines at each of the
8 properties would be remotely disabled. The system
9 would remain up, running, fully functioning --

10 CHAIRMAN DECKER: Isn't that the
11 distinction without a difference? Isn't that a
12 distinction without a difference?

13 MR. DOWNEY: No, because that puts you
14 squarely in the position --

15 CHAIRMAN DECKER: Would you prefer that
16 disable the system? Could they do that? If they can
17 do that, why can't they do this? This is their
18 decision to make.

19 I'm asking you if they can take the step up
20 of disabling the whole system, why can't they do
21 something short of that as a preference of hopefully
22 getting up and running faster, which is something we
23 would all want?

24 MR. DOWNEY: I don't think we had at any
25 point represented that and I certainly didn't intend

1 to if I did that. You do not have jurisdiction over
2 DOR.

3 I received a letter this evening from Frank
4 Donaghue making it clear that your position was, in
5 fact, that you did not have such jurisdiction. I
6 don't think anybody here is going to make that
7 argument.

8 If DOR, for whatever reason, decides to
9 pull the plug on the system or simply disable the
10 machines, that's a DOR issue. That's why we're in
11 court with DOR.

12 What we're asking of you is if, in fact,
13 DOR leaves that system operable and if nonetheless
14 their employees are walking out the door -- and let
15 me give you the scenario we wind up successful on the
16 injunction, DOR is told don't turn off the system but
17 are the nonetheless allowed to walk out the door, we
18 don't want you to have some anticipatory action
19 waiting behind going on to the next day to close the
20 doors, notwithstanding the fact that all of this data
21 continues to be collected, that all of the redundancy
22 remain in place and all of the audibility of the
23 system remains fully functional.

24 CHAIRMAN DECKER: I'm not sure I understood
25 the premise, maybe other Board members did, of what

1 you're saying.

2 COMMISSIONER DIGIACOMO COLINS: I think we
3 keep getting back to the issue that I have a problem
4 with, which is you're asking us to say if the
5 Department of Revenue walks away from this because
6 they have no funding and they can't stay on the job,
7 that we permit GTECH to operate this system and
8 control this system because Revenue is -- and that's
9 the fundamental issue I have a problem with, because
10 the language of 1323 and also because of the, you
11 know, the basic requirements that protect the
12 integrity of gaming. I think we keep getting back to
13 that issue.

14 MR. DOWNEY: Commissioner, respectfully,
15 for lack of a better term, if you're not buying the
16 argument, that's fine; but let me state it clearly
17 again that whether those Revenue employees sit in
18 those seats or not, we're talking about 6 to 18
19 people, whether they sit in those seats or not,
20 Revenue controls the system. There is an agreement
21 in place. The executive of Revenue is staying right
22 where they are. They control the system.

23 CHAIRMAN DECKER: Commissioner Rivers, we
24 cut you off. I think we -- that discussion probably
25 helped get to your question.

1 COMMISSIONER RIVERS: Exactly.

2 MR. DOWNEY: And Chairman, just to your
3 point with respect to the degree to which the Gaming
4 Control Board can exercise any jurisdiction over
5 Revenue, I respectfully would argue that Revenue is
6 precisely entitled to decide how they control the
7 system. They choose to enter into a highly detailed
8 contract to do so.

9 CHAIRMAN DECKER: But they haven't given up
10 the responsibility to manage the oversee of the
11 system under the law, have they?

12 In other words, when you outsource, you
13 still need someone there to outsource the management
14 of the company. They haven't abrogated those
15 responsibilities.

16 MR. DOWNEY: I don't think we would argue
17 that they have.

18 CHAIRMAN DECKER: You're saying even though
19 people familiar with monitoring this, as long as
20 there is one body left at DOR, that's okay?

21 MR. DOWNEY: It's my understanding that the
22 director is more than familiar with this system but,
23 yes, that's --

24 CHAIRMAN DECKER: Okay. Let's see.
25 Commissioner Rivers?

1 COMMISSIONER RIVERS: I'm okay.

2 CHAIRMAN DECKER: Okay?

3 COMMISSIONER RIVERS: Yes.

4 CHAIRMAN DECKER: Let's go to Commissioner
5 Sojka.

6 COMMISSIONER SOJKA: At the conclusion of
7 Mr. Downey's presentation, I had a lot of questions,
8 but I think I have benefited from the questions and
9 the responses. I don't wish to belabor this. I had
10 just one concern again. It's the same one that is
11 bothering everyone, and that is Department of Revenue
12 capacity to control -- to provide oversight and to
13 assure responsiveness of a contracted service
14 provider.

15 I think maybe we were a little too
16 draconian when we were talking about defaults and
17 crashes and people walking away. I think the reality
18 is that there's more going on on a daily basis maybe
19 than we're willing to discuss at this point.

20 I'm aware at least of some situations where
21 there has had to be some assurance of responsiveness
22 provided by the employees of the Department of
23 Revenue to make sure that GTECH was doing what they
24 needed to do because that was their contracted
25 service provider, not ours.

1 In the absence of that, I'm concerned that
2 daily regular oversight that you would provide to
3 make sure that the contractor is responsive.

4 MR. DOWNEY: The only thing I can offer to
5 you is, again, there are -- it is clear to us that
6 the seniority of the Department of Revenue remains in
7 place to the extent that there is a problem with
8 whatever -- whatever element in the series of
9 concerns that you list, there are people at Revenue;
10 and to take it down to sort of a colloquial level, if
11 GTECH is not doing what they're supposed to do, if
12 they're not responsive and getting on the stick,
13 we're going to be all over Department of Revenue to
14 get down there and shake whatever stick needs shaken.

15 CHAIRMAN DECKER: Okay. Commissioner
16 Sojka?

17 COMMISSIONER SOJKA: That's fine for me.
18 Thank you.

19 CHAIRMAN DECKER: Commissioner Angeli, any
20 other questions?

21 COMMISSIONER ANGELI: Fine.

22 CHAIRMAN DECKER: Any other questions?
23 Okay.

24 COMMISSIONER McCABE: Mr. Chair, I would
25 like to address one comment that Mr. Downey made.

1 Are you there?

2 CHAIRMAN DECKER: Yes. Please.

3 COMMISSIONRE McCABE: I could maybe see
4 about your argument about during the snowstorm for
5 one or two days, nobody was there to -- from DOR to
6 monitor the system and maybe people could accept one
7 or two days, but we have no way to tell how long
8 these furloughs and this budget impasse may go. It
9 may not be one or two days. It could be a week, two
10 weeks, God help us, it could be even longer.

11 What do you say if it goes longer than one
12 or two days and goes into a week or two weeks? How
13 do we make sure that the integrity of the system is
14 maintained at that point?

15 MR. DOWNEY: Well, I don't think -- again,
16 we have been through this. I think I have been as
17 clear as I can that we don't think those guys have to
18 be behind the wheel given the type of control that
19 DOR and the manner in which they choose to exercise,
20 but getting back -- let's get back to where we
21 started in terms of the relief that you are
22 contemplating and what we have asked.

23 You're headed sort of in the same direction
24 we are, and that is we do not believe at this point
25 that you need to take any action in contemplation of

1 what might happen.

2 What we are asking is that you take no
3 action. At some point should you come to the
4 conclusion that something has got to happen, we can't
5 continue to let the system operate, we don't have the
6 assurances, it's been too long, whatever the issue
7 might be, take that up as you see fit at that point
8 and we'll come --

9 CHAIRMAN DECKER: Mr. Downey, I don't mean
10 to interrupt. We're talking tomorrow morning at
11 7:00. If something happens between now and then, we
12 need to be prepared to take this action, if we don't
13 agree with your argument.

14 MR. DOWNEY: I understand that that's a
15 separate and distinct issue. In terms of mechanics,
16 you certainly need to know what your mood would be
17 and what your feelings would be.

18 As far as actually taking an anticipatory
19 action that is going to go day one, I think the
20 member's question was specifically, let's assume that
21 we're okay with letting this go for a couple of days,
22 as we have done. There's precedence for this action.
23 What would I do then?

24 My suggestion to you is if you hit a point
25 where it's time to move in your opinion, then you

1 call the special meeting as you have done tonight.

2 CHAIRMAN DECKER: Is the snowstorm an
3 equivalent of a shutdown of Department of Revenue?

4 COMMISSIONER SOJKA: Mr. Chairman, could I
5 insert the college professor's perspective on this
6 one real quickly, just on the one single point of the
7 two day snowstorm? I would simply argue that's a
8 totally irrelevant point and doesn't deal with this
9 at all.

10 That would be like saying if a police force
11 went on strike for two days and there were no
12 murders, we would not need a police force. It's just
13 not a relevant point.

14 MR. DOWNEY: I respectfully disagree.
15 There is a scenario of which you are aware and,
16 notwithstanding that scenario, you are aware that the
17 DOR employees are not sitting in their seat.

18 You choose to take no action for a period
19 of time. It turns out to be two days, I think that's
20 directly relevant. We know tomorrow morning, they're
21 going home. They're going to be absent for some
22 period of time. We don't know how long that's going
23 to be.

24 COMMISSIONER SOJKA: I'm saying the
25 snowstorm situation doesn't predict what is going to

1 happen.

2 MR. WELKS: This is Keith Welks. May I ask
3 a question? I'm confused. I thought Mr. Downey
4 earlier said that as a consequence of the snowstorm,
5 no invoices were submitted. I don't know that that's
6 necessarily synonymous with the same people not being
7 present tomorrow not being present during the
8 snowstorm.

9 I don't know enough to know the function
10 associated with generating the invoices, which was a
11 deficiency he identified first are the same as we
12 said now.

13 CHAIRMAN DECKER: I think that's what Gary
14 Sojka is saying, what he was saying.

15 MR. WELKS: I want to echo the college
16 professor's point. That argument is irrelevant more
17 than we think.

18 CHAIRMAN DECKER: Can I ask another
19 question, if I might? I'm changing the subject. If
20 we disagree with you and we find that the presence of
21 the Department of Revenue employees are in a
22 condition to proceed with the continuing of the
23 opening of the casinos, what vehicle do we use to
24 close the casinos?

25 You said we can't use -- we don't have the

1 suspension of a license. I don't think that would be
2 an appropriate vehicle, and I think some of the other
3 Commissioners echoed that earlier. What mechanism do
4 you suggest we use to close the casinos? Call and
5 ask them politely?

6 MR. DOWNEY: Respectfully, I would not
7 deign to provide you legal advice on the subject.

8 CHAIRMAN DECKER: That is fine. I think a
9 cease and desist order would be appropriate if we
10 come to that conclusion, but we haven't heard all of
11 the arguments.

12 Any other questions on this?

13 Okay. With that said, I think said, we're
14 going to turn it over to Anne, Anne Neeb, our
15 Executive Director, and Frank Donaghue, our chief
16 counsel, to give the Board some advice on what they
17 believe to be our legal obligations under Act 71.

18 MS. LaCOUR NEEB: One moment, Chairman.

19 Chairman Decker, members of the Board,
20 today at approximately 7:30, we were notified by the
21 Department of Revenue through our gaming laboratory
22 supervisor that in the event there is a furlough in
23 place, on Monday at 7:00 a.m. that the Department of
24 Revenue would disable or disconnect the Central
25 Control System in a manner that would be the least

1 harmful by way of having the system turned back on;
2 but as far as we know, that's what their intentions
3 are effective 7:00 a.m. if there's a furlough.

4 CHAIRMAN DECKER: Well, Mrs. Neeb and
5 Mr. Donaghue, do you have any reason to believe that
6 we can trump their decision or can we tell them not
7 to do that?

8 MS. LaCOUR NEEB: I'm going to turn this
9 over to Mr. Donaghue.

10 MR. DONAGHUE: The short answer is no, but
11 I would like to also make a statement.

12 CHAIRMAN DECKER: If Miss Neeb had -- if
13 Mrs. Neeb had some more things she wanted to give us,
14 I didn't mean to close there --

15 MS. LaCOUR NEEB: I just wanted that fact
16 to be on the record because there was some concern
17 about discretion. We've been notified and be on
18 notice as of 7:30 p.m. tonight that they intend to
19 disable or disconnect the Central Control System
20 effective 7:00 a.m.

21 CHAIRMAN DECKER: Thank you. Could you
22 continue, either Mrs. Neeb or Mr. Donaghue, on the
23 subject of what you all believe.

24 MS. LaCOUR NEEB: And how that affects us?

25 MR. DONAGHUE: Mr. Chairman and Board

1 members, with respect to your obligations under the
2 Act, the primary objective of Act 71, to which all
3 other objectives and purposes are secondary, is to
4 protect the public through the regulation and
5 policing of all activities involving gaming and
6 practices that continue to be unlawful.

7 The Board has general and sole regulatory
8 authority over the conduct of gaming and related
9 activities as provided in the Gaming Act.

10 The Board shall ensure the integrity of the
11 acquisition and operation of slot machines and
12 associated equipment and shall have sole regulatory
13 authority over every aspect of the authorization and
14 operation of slot machines.

15 Primary functions of the Board set forth
16 throughout the Gaming Act are to license slot machine
17 facilities and their employees to conduct
18 investigations, to regulate the conduct of games,
19 hours of operations and patronage of facilities.

20 With regard to the Department of Revenue,
21 while a large portion of the Department's
22 responsibilities and involvement under the Gaming Act
23 is directed to the collection and auditing of taxes
24 and fees collected under the Gaming Act, as well as
25 the subsequent disbursement of those funds, the

1 Department was also vested with the responsibility
2 for the initial acquisition of a Central Control
3 Computer System, which would tie all slot machines
4 operating in the Commonwealth into one computer
5 system controlled by the Department of Revenue.

6 Specifically, Section 1323 of the Act
7 provides for the Central Control Computer System and
8 provides to facilitate the auditing and security of
9 programs critical to the integrity of slot machine
10 gaming in this Commonwealth.

11 The Department shall have overall control
12 of slot machines, and all slot machine terminals
13 shall be linked at an appropriate time to be
14 determined by the Department to a Central Computer
15 under the control of the Department and accessible by
16 the Board to provide auditing program capacity and
17 individual terminal information as approved by the
18 Department, and shall include real time information
19 retrieval and terminal activation and disabling
20 programs.

21 The Central Control Computer System is
22 required in an emergency or other things to provide a
23 fully operational statewide slot machine control
24 system supporting the maximum number of machines that
25 can be permitted to operate and deliver a system that

1 has the ability to verify software, detect
2 authorizations and payout, and detect other methods
3 of fraud in all aspects of operation of slot
4 machines.

5 The Department of Revenue has about eight
6 employees who oversee the Central Control Computer
7 System to assure the security of the system and to
8 direct remedial efforts if the systems or the
9 machines regulated by the system malfunction.

10 According to the Department, those
11 employees are integral to the security and monitoring
12 of the system and must be employed in order for the
13 system to remain operational.

14 According to the Department, the concern in
15 operating the system without the Revenue employees
16 present arises when a machine or computer system
17 malfunctions causing a breach in security and
18 accountability of the system.

19 In that case, only a Department employee is
20 authorized to take action to address the fault or,
21 more importantly, the fraudulent activity, affecting
22 the machine.

23 The Board does not have control of the
24 Central Control Computer System and it has previously
25 been stated, the Department of Revenue has indicated

1 that it will disable the slot machine through the
2 Central Control Computer System at 7:00 tomorrow
3 morning, July 9th, 2007.

4 CHAIRMAN DECKER: What questions do we
5 have? Let's start with Commissioner Angeli. Ray, do
6 you have any questions of Frank or Anne?

7 COMMISSIONER ANGELI: Can you hear me?

8 CHAIRMAN DECKER: Yes, I can hear you now.

9 COMMISSIONER ANGELI: I'm having trouble
10 with my mute. I'm okay.

11 CHAIRMAN DECKER: Go ahead.

12 COMMISSIONER ANGELI: I'm okay.

13 CHAIRMAN DECKER: We'll reverse it this
14 time. Commissioner Sojka?

15 COMMISSIONER SOJKA: No questions on that.

16 CHAIRMAN DECKER: Commissioner Rivers?

17 COMMISSIONER RIVERS: No questions.

18 CHAIRMAN DECKER: Commissioner McCabe?

19 COMMISSIONER McCABE: I have one. Frank,
20 this is Ken McCabe. Frank, you heard Mr. Downey's
21 presentation. His proposal is for us to take no
22 action. Would we be doing our job if we took no
23 action?

24 MR. DONAGHUE: Commissioner. Not believe
25 so. The Act is clear that you have an obligation

1 over all others to protect the public through the
2 regulation and policing of gaming in Pennsylvania;
3 and without the Central Control Computer System, we
4 cannot do that.

5 COMMISSIONER McCABE: Thank you.

6 CHAIRMAN DECKER: All right. Commissioner
7 Coy?

8 COMMISSIONER COY: No questions.

9 CHAIRMAN DECKER: Commissioner Colins?

10 COMMISSIONER DiGIACOMO COLINS: No
11 questions.

12 CHAIRMAN DECKER: I think I asked my
13 question of Frank. Let me ask it a little
14 differently this time.

15 The suggestion of the Board, would we be --
16 let me change that. Could we order Secretary Wolf to
17 assign and keep on board specific individuals? Is
18 that our power to do that?

19 MR. DONAGHUE: Clearly, it is not within
20 your power.

21 CHAIRMAN DECKER: So there's nothing that
22 we can do to override any decision made by Secretary
23 Wolf and the Department of Revenue with respect to
24 the Central Control System, is there?

25 MR. DONAGHUE: No, that is correct.

1 CHAIRMAN DECKER: All right. Any other
2 questions for staff on this issue? All right. Is
3 there a recommendation --

4 MS. LaCOUR NEEB: Yes.

5 CHAIRMAN DECKER: -- from staff as a result
6 of the various discussions?

7 MS. LaCOUR NEEB: Okay. What we would like
8 to do at this point, if it's agreeable with the
9 Board, is go into Executive Session pertaining to
10 legal issues for about five minutes. We would like
11 to move that we go into Executive Session.

12 CHAIRMAN DECKER: Is everyone okay with
13 that?

14 COMMISSIONERS: Yes.

15 (Executive Session.)

16 COMMISSIONER DiGIACOMO COLINS: Hello.
17 This is Mary Colins.

18 COMMISSIONER RIVERS: Sanford Rivers.

19 COMMISSIONER McCABE: Ken McCabe.

20 COMMISSIONER ANGELI: Ray Angeli.

21 COMMISSIONER COY: Jeff Coy.

22 MR. WELKS: Keith Welks.

23 COMMISSIONER SOJKA: Is Tad there?

24 MR. RESCH: We haven't heard from Tad.

25 CHAIRMAN DECKER: Hello.

1 COMMISSIONER SOJKA: Tad?

2 CHAIRMAN DECKER: Are we back?

3 MS. LaCOUR NEEB: We're all back and
4 everyone is here.

5 CHAIRMAN DECKER: Do we need to do roll
6 call?

7 MS. LaCOUR NEEB: We kind of did.

8 CHAIRMAN DECKER: I have one question and I
9 want to go back to Frank Donaghue.

10 Frank, are you there?

11 MR. DONAGHUE: Yes.

12 CHAIRMAN DECKER: If we decide that we can
13 no longer agree to let the casinos operate under
14 Section 1323, that the Department of Revenue shuts
15 down the Central Computer System --

16 MS. LaCOUR NEEB: We lost you in the middle
17 of your question.

18 CHAIRMAN DECKER: Let me go back to it. In
19 the event that the Board should decide that it has to
20 require that the casino operators licensees, if you
21 will, close because the Department of Revenue has
22 ceased the operation of Central Control System, what
23 is the appropriate vehicle for making such an order?
24 Can we use a cease and desist order?

25 MR. DONAGHUE: I think it would be

1 appropriate to use a cease and desist order as it
2 would be within the inherent power of the Board to do
3 so under Section 1102 of the Act, which empowers the
4 Board to protect the public of the policing of all
5 activities involved in gaming.

6 CHAIRMAN DECKER: Okay. Is there a
7 recommendation of the Board from the staff?

8 MS. LaCOUR NEEB: Yes. This is Anne Neeb.
9 Based on the present impasse relating to the
10 Commonwealth of Pennsylvania's fiscal year budget
11 2007 and 8 and if not resolved prior to 7:00 a.m.,
12 Monday, July 9th, 2007, this will result in the
13 furlough of all Pennsylvania Department of Revenue
14 employees responsible of the operation, monitoring,
15 and control of the Central Control Computer System,
16 the Department of Revenue has stated publicly and on
17 the record that without the Department of Revenue
18 employees, the proper operation, monitoring, and
19 control of the Central Computer System cannot be
20 accomplished and that the Department of Revenue will
21 disable all slot machines in the Commonwealth through
22 the Central Control System.

23 The Pennsylvania Gaming Control Board staff
24 requests that the Pennsylvania Gaming Control Board
25 find that it cannot fulfill its statutory obligation

1 to ensure the integrity of gaming in the Commonwealth
2 of Pennsylvania should the present budget impasse
3 result in the workforce furlough of the Department of
4 Revenue employees overseeing the Central Control
5 Computer System.

6 As such, as Executive Director, I would
7 request that the Board issue a cease and desist order
8 ordering the casinos to cease gaming activities on
9 the slot machines at the facilities and, further, to
10 authorize me to take necessary steps to effectuate
11 the prompt and orderly reopening of all licensed
12 facilities and operating slot machine facilities in
13 the Commonwealth upon notice by the Pennsylvania
14 Department of Revenue that it can, thereafter,
15 accurately operate, monitor, and control the Central
16 Control Computer System and reestablish connectivity
17 at each casino.

18 CHAIRMAN DECKER: Miss Neeb, let me make
19 sure I understand. This order would only take effect
20 in the event that --

21 MS. LaCOUR NEEB: If the event of a
22 furlough in the next eight hours.

23 CHAIRMAN DECKER: Right. Let me say it
24 again. The Department of Revenue takes action to
25 disable in one way or another the Central Control

1 System or is not able to control --

2 MS. LaCOUR NEEB: That is correct. What
3 I'm requesting is the Board issue this order
4 contingent upon a furlough going into effect at 7:00
5 a.m., Monday, July 9th. In the event there is no
6 furlough, this order would become moot and not
7 signed.

8 CHAIRMAN DECKER: Okay. But suppose
9 negotiations continue for a while --

10 COMMISSIONER ANGELI: That was my question.

11 CHAIRMAN DECKER: Suppose it happens three
12 days from now. If you're asking us to vote on
13 something, I would like the order to be in a form
14 that would permit the order not to go into effect
15 that something would happen -- not that it would
16 happen upon 7:00 a.m.

17 MS. LaCOUR NEEB: Right.

18 CHAIRMAN DECKER: I think it's up to the
19 Department of Revenue to decide when and if. Okay?

20 MS. LaCOUR NEEB: Right. My recommendation
21 was based on information we received this evening at
22 7:30 that they intend to disable the Central Control
23 System.

24 CHAIRMAN DECKER: Let me put it this way:
25 This order, the contingency, or anything we're going

1 to pass tonight, this resolution --

2 MS. LaCOUR NEEB: Right.

3 CHAIRMAN DECKER: -- should remain in
4 effect until a budget is approved and this ends this
5 current cycle so if the parties -- there's no reason
6 to have an order shutting down the casinos as long as
7 the Department of Revenue employees are still in
8 their seat.

9 MS. LaCOUR NEEB: That is correct.

10 CHAIRMAN DECKER: If it takes a few more
11 days and if someone wants to continue this for a few
12 more days, but we don't have any control over that
13 either?

14 MR. DONAGHUE: That would be correct.

15 CHAIRMAN DECKER: May I have a motion?

16 MR. WELKS: This is Keith Welks. Now I'm a
17 little confused. Is the trigger of it the furlough
18 or the action by Department of Revenue to disable the
19 system and, conversely, is the order automatically
20 listed until a furlough is rescinded or when Revenue
21 restores the system? I think those are different
22 events.

23 CHAIRMAN DECKER: I think the order reads
24 pretty clearly. It does not go into effect when
25 there is a furlough which capitates the ability of

1 Revenue to oversee and control the Central Control
2 System. So it does not go into effect until then.

3 MR. WELKS: The furlough -- I'm sorry. It
4 is a furlough and not the act of disabling the
5 system. I guess I raise that --

6 CHAIRMAN DECKER: It's one in the same.

7 MS. LaCOUR NEEB: They're one in the same.

8 CHAIRMAN DECKER: They're not distinct acts
9 because when they leave, they're going to stop the
10 system.

11 MR. DONAGHUE: That is correct.

12 MR. WELKS: I guess what I'm wondering, is
13 it conceivable that Revenue could ultimately decide
14 that it furloughs people and doesn't disable the
15 system?

16 CHAIRMAN DECKER: If the system is still
17 running and not --

18 MR. WELKS: If it triggers the furlough --

19 CHAIRMAN DECKER: It's the furlough and
20 disablement of the system.

21 MR. DONAGHUE: So it would require both of
22 those actions.

23 CHAIRMAN DECKER: Correct. It's
24 disablement of the system and leave it at that.

25 MR. WELKS: That's what I thought. It is

1 the disablement that we were really worried about.

2 CHAIRMAN DECKER: That is correct. They
3 could lay off those people and not put -- it's their
4 decision to make.

5 MR. WELKS: I apologize.

6 CHAIRMAN DECKER: It's a good point of
7 clarification. If and when the Department of Revenue
8 decides that it's going to restart the system, then,
9 of course, this order would be rescinded; is that
10 correct, Anne?

11 MS. LaCOUR NEEB: That is correct. We
12 would ask that the Board delegate the authority to
13 authorize that without having to reconvene a Board
14 meeting.

15 CHAIRMAN DECKER: So it can be done --

16 MS. LaCOUR NEEB: Instantaneously.

17 CHAIRMAN DECKER: We would authorize you as
18 the Executive Director.

19 COMMISSIONER SOJKA: Do we actually have
20 verbiage that has disabling and takes out furlough as
21 the triggering event?

22 MR. DONAGHUE: So it would be effective --
23 again, this order would be effective upon the
24 Department of Revenue's action of furloughing
25 employees and disabling the Central Computer System.

1 COMMISSIONER SOJKA: So it's an and, it's
2 both?

3 MS. LaCOUR NEEB: We will modify the
4 language and prepare an order for the Board.

5 CHAIRMAN DECKER: Okay.

6 MR. DONAGHUE: As I just stated.

7 MS. LaCOUR NEEB: As stated earlier.

8 CHAIRMAN DECKER: Any other questions?

9 COMMISSIONER McCABE: I just have a
10 procedural question. Anne, let's say that that
11 happens and two hours or three hours later they seem
12 to get past the impasse, what does that do? How
13 difficult is that for us to put back together again?

14 MS. LaCOUR NEEB: After being notified and
15 in conjunction with the notice we received today from
16 the Department of Revenue, I guess we have to
17 anticipate that there would have been a furlough.

18 We convened a meeting of our Bureau of
19 Investigation and Enforcement along with our casino
20 enforcement agents and our division of internal
21 control examiners.

22 They have already left to go to the
23 different properties from Harrisburg; and at 5:00
24 a.m. tomorrow, they will be there on premises at each
25 one of the facilities.

1 Basically, at that point, if, again, you
2 know, if we get the word at 6:59 a.m. that everything
3 has been resolved, they'll get back in their cars and
4 come home and gaming will commence. If we get the
5 word --

6 CHAIRMAN DECKER: Gaming will continue.

7 MS. LaCOUR NEEB: I mean continue but
8 again, if that hasn't happened and then we also will
9 be in contact the Department of Revenue, who has
10 already informed our Gaming Lab of how they're going
11 to do the shutdown.

12 We're just poised in a position ready to
13 respond based on what happens, if that helps answer
14 that question.

15 CHAIRMAN DECKER: It will take four to
16 seven days to completely close -- for us to
17 completely close the operations. They will be closed
18 but to completely close it and wrap things up, it
19 will take four to seven days. If it takes hours, it
20 would take less.

21 COMMISSIONER McCABE: That explains it.

22 CHAIRMAN DECKER: Okay. All right. May I
23 have a motion to that effect, put into effect Anne's
24 -- the order that Anne read to us?

25 COMMISSIONER COY: Mr. Chairman, in light

1 of the possible furlough of the Department of Revenue
2 employees on Monday, July 9, 2007 at 7:00 a.m. or at
3 a subsequent date, I make a motion that the Board
4 adopt a cease and desist order as just read and
5 modified by our Executive Director.

6 COMMISSIONER SOJKA: Second.

7 MR. DONAGHUE: Before we go into a roll
8 call vote on this, Mr. Downey indicated he -- just
9 indicated to me that he would like to move in a
10 couple of affidavits.

11 CHAIRMAN DECKER: Oh, yes. Please.

12 MR. DONAGHUE: Four affidavits.

13 CHAIRMAN DECKER: I forgot. I assumed it
14 had happened.

15 MR. DOWNEY: Just a point of order, I have
16 a lot of copies of five affidavits that I referenced
17 in the beginning of my presentation. I would like to
18 move those into evidence.

19 CHAIRMAN DECKER: Any objection?

20 MR. DONAGHUE: I would just ask that he
21 give a general description of what he is moving in.

22 MR. DOWNEY: Sure. There are two flavors
23 of affidavit. The first four substantially similar
24 affidavits that are from operational folks at the
25 property level who have extensive knowledge of the

1 relationship of the operations with the Central
2 Server System and the individuals at sort of the
3 other end of the telephone, if you will, being GTECH,
4 generally also talk about some background in terms of
5 compliance of the properties and their systems with
6 the statutory requirements as far as connectivity of
7 the system.

8 The fifth affidavit is an affidavit of Lynn
9 Hughes, who is our eastern district counsel for
10 Harrah's, and it relates to our meeting yesterday --
11 or Friday rather in these offices, as I mentioned,
12 and largely focuses on just bringing into evidence
13 properly the representations I made to you regarding
14 DOR statements to us.

15 MR. DONAGHUE: There's no objection here,
16 Mr. Chairman.

17 CHAIRMAN DECKER: Okay. Thank you very
18 much.

19 Any objection on the part of any of the
20 Board members?

21 We'll take a quick vote. All of those in
22 favor of accepting the affidavits into evidence,
23 please say aye.

24 COMMISSIONERS: Aye.

25 CHAIRMAN DECKER: Any opposed?

1 Okay. They are admitted. Thank you.

2 MR. DOWNEY: Thank you, Mr. Chairman.

3 MR. DONAGHUE: Now you're back to the
4 original motion.

5 CHAIRMAN DECKER: Are there any other
6 questions on this proposed resolution and order?

7 Hearing none, all those in favor?

8 COMMISSIONERS: Aye.

9 CHAIRMAN DECKER: Any opposed?

10 Motion carries.

11 Let me just say, just so we're clear, none
12 of this reflects on any of the activities of this
13 potential cease and desist order, reflects in any way
14 on any of the acts of our licensees and operators.

15 This has nothing to do with them and, of
16 course, they were all caught up in a bunch of events,
17 but I think we believe we have no choice to go on
18 that order and task today.

19 Is there any other comments or questions?

20 COMMISSIONER RIVERS: Mr. Commissioner,
21 yes. I think that we are basically doing the job
22 that we have been asked to do and that to uphold the
23 integrity of the system and maintaining the fiduciary
24 responsibilities we have been charged with.

25 I hope that people recognize that our

1 actions should not be taken in any way, shape, or
2 form that we are trying to punish anyone.

3 COMMISSIONER DiGIACOMO COLINS: Yes.
4 Mr. Chairman, could I make a brief statement?

5 CHAIRMAN DECKER: Please.

6 COMMISSIONER DiGIACOMO COLINS: I basically
7 view this as an interpretation of law we have to
8 make. I think it's the language of the statute and
9 is crystal clear, and I think we are just basically
10 mandated what we are doing based on the statutory
11 Section 1324.

12 CHAIRMAN DECKER: I think certainly no one
13 on our Board would prefer that the casinos be closed.
14 No one would prefer that. The Commonwealth would not
15 benefit or our licensees would not benefit.

16 However, it is the second part of any such
17 task what we are obligated in law and I think
18 Commissioner Colins summarized that. There is no
19 need to repeat that.

20 Any other comments or questions from Board
21 members?

22 Hearing none, I don't think we have
23 anything else to come before the Board this evening.
24 I would entertain a motion to adjourn.

25 COMMISSIONER McCABE: So moved.

1 COMMISSIONER SOJKA: Second.

2 CHAIRMAN DECKER: All in favor?

3 COMMISSIONERS: Aye.

4 CHAIRMAN DECKER: Opposed? Motion carries.

5 MS. LaCOUR NEEB: Thank you.

6 (The proceedings concluded at 10:47 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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