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INDEPENDENT REGULATORY REVIEW COMMISSION

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

April 27, 2011

Kevin O'Toole, Executive Director
Pennsylvania Gaming Control Board
Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17106-9060

Re: Regulation #125-141 (IRRC #2888)
Pennsylvania Gaming Control Board
Preliminary Provisions, Bureau of Investigation and Enforcement

Dear Mr. O'Toole:

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

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

Sincerely,

Kim Kaufman
Executive Director

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Enclosure

cc: Honorable Jane M. Earll, Majority Chairman, Senate Community, Economic and
Recreational Development Committee
Honorable Wayne D. Fontana, Minority Chairman, Senate Community, Economic and
Recreational Development Committee
Honorable Curt Schroder, Majority Chairman, House Gaming Oversight
Honorable Rosita C. Youngblood, Minority Chairman, House Gaming Oversight
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board Regulation #125-141 (IRRC #2888)

Preliminary Provisions; Bureau of Investigations and Enforcement

April 27, 2011

We submit for your consideration the following comments on the proposed rulemaking published in the February 26, 2011 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Gaming Control Board (Board) to respond to all comments received from us or any other source.

I. Section 401a.5. Adjudicatory function of the Board; ex parte communications. – Clarity; reasonableness; implementation procedures.

This section establishes the appropriate adjudicatory functions and conduct of the Board. We raise two issues.

First, in Subsection (a), why are adjudicatory actions limited to “contested on-the-record” proceedings? A commentator suggests that on-the-record proceedings are not the only means for an agency to act in an adjudicatory capacity. Therefore, the final-form regulation should distinguish between on-the-record and off-the-record proceedings.

Second, the Preamble provides that notification of an ex parte communication and an opportunity to respond will be given to “all parties.” However, Subsection (d) provides that notification of the communication will be given “to all parties to a hearing or other proceeding directly affected by the anticipated vote or action of the Board or presiding officer...” Why does the proposed rulemaking limit notification of, and an opportunity to respond to, an ex parte communication to only those parties directly affected by the outcome? The final-form regulation should clarify this issue.

2. Section 405a.1. General duties and powers. – Clarity

There is a typographical error in Subsection (a). In the final-form regulation, “Chief Council” should be replaced with “Chief Counsel.”

3. Section 405a.4. Conduct. – Clarity.

In Subsection (b), what does it mean to “exert influence?” The final-form regulation should define this term.