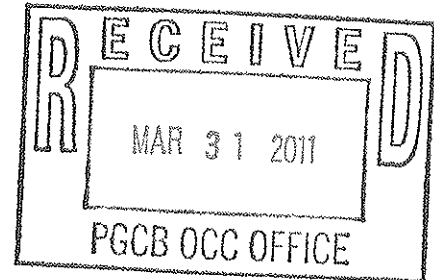


Mark S. Stewart
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March 29, 2011

VIA HAND DELIVERYSusan Yocum
Director of Regulatory Review
Pennsylvania Gaming Control Board
303 Walnut Street, Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17106Re: Joint Comments to Proposed Rulemaking No. 125-141

Dear Ms. Yocum:

Downs Racing, L.P. d/b/a Mohegan Sun at Pocono Downs ("MSPD") and Greenwood Gaming and Entertainment, Inc. d/b/a Parx Casino ("GGE"), respectfully submit these Joint Comments to Proposed Rulemaking No. 125-141, which revises the Pennsylvania Gaming Control Board's ("PGCB" or the "Board") regulations concerning *ex parte* communications and the separation of adjudicatory and prosecutorial functions within the PGCB. The Proposed Rulemaking addresses an issue that is vital to any licensee or party that appears before an administrative agency: ensuring that the due process of law guaranteed by the Pennsylvania Constitution is honored and observed in adjudicatory proceedings before that agency. *Lyness v. Commonwealth*, 605 A.2d 1204, 1207 (Pa. 1992).

MSPD and GGE generally find the proposed revisions to the Board's regulations to be movement in the right direction. The key holding from *Lyness* for a large agency, such as the PGCB, is that prosecutory and advisory/adjudicatory roles must be "parceled and divided among distinct departments or boards" with "walls of division" erected in between them. *Lyness*, 605 A.2d at 1209. Ultimately, however the PGCB chooses to bifurcate these functions within its agency, its processes and practice must comply with this constitutional requirement.

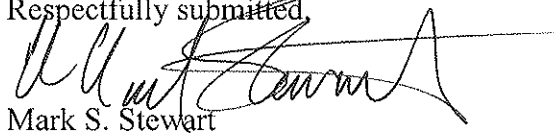
In addition to the foregoing, we note two additional comments to the Proposed Rulemaking. First, Section 401a.5(a) states that the Board or a presiding officer act in an adjudicatory capacity when they consider "any matter presented for a decision by the Board or presiding officer in a contested on-the-record proceeding." While MSPD and GGE agree that such a proceeding would be adjudicatory in nature, we note that on-the-record proceedings are not the only context in which an agency acts in an adjudicatory capacity. Adjudications, as defined in the Administrative Agency Law, 2 Pa. C.S. § 101, and by the courts, may encompass other forms of action by the PGCB.

Susan Yocum
March 28, 2011
Page 2

Second, proposed Section 401a.5(d) requires notice of an *ex parte* communication and an opportunity to respond to be afforded to all parties to a proceeding “directly affected by the anticipated vote or action of the Board or presiding officer related to the *ex parte* communication.” MSPD and GGE submit that all parties to a proceeding should receive such notice and have the contemplated opportunity to respond, without the need for the qualitative assessment of their participation suggested by the quoted language.

MSPD and GGE respectfully request that the Board consider the above Joint Comments to Proposed Rulemaking No. 125-141, and issue amendments to it that address the concerns raised herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark S. Stewart', with a long horizontal flourish extending to the right.

Mark S. Stewart

MSS/jls

cc: Robert Green (GGE)
Robert Soper (MSPD)
Mike Bean (MSPD)
Tom Bonner (GGE)