

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board #125-86 (IRRC #2695)

Slot Machine Licensing

July 16, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the May 17, 2008 *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.

1. Section 441a.7. - Licensing hearings for slot machine licenses. - Statutory authority; Possible Conflict with Statute; Implementation procedures; Reasonableness; Clarity.

The proposed rulemaking would add a new subsection (r) to this section, which would expand the provisions related to licensing hearings for potential slot machine licensees.

We raise five issues.

A. Statutory Authority, Possible Conflict with Statute and Clarity

First, subsection (r) provides that a license applicant may publicly respond to inquiries related to confidential information during a licensing hearing. However, the Gaming Act (Act) states that: “[a]ll information submitted by an applicant...or obtained by the board or bureau as part of a background investigation from any source **shall be considered confidential.**” 4 Pa.C.S. §1206(f) (emphasis added). Since the proposed regulation now permits confidential information to be disclosed, a commentator questioned whether this option conflicts with the restrictions already imposed by the Act. We agree and recommend that the Board should explain how subsection (r) is consistent with §1206 (f) of the Act.

Second, the proposed rulemaking affords the license applicant an opportunity to request that confidential information be heard in executive session. In light

of the deletion of § 1206(a) from the Act, which specifically provided that “confidential documents relative to personal background information provided to the board...shall be confidential and considered in closed executive session,” what is the Board’s statutory authority for permitting executive sessions in subsection (r)(1)?

Third, subsection (r) references “confidentiality provided for in 4 Pa.C.S. § 1310(a).” However, that section of the Act does not include a confidentiality provision. Did the Board intend to reference § 1206(f) (pertaining to the confidentiality of information submitted pursuant to § 1310(a))? The Board should correct the citation in the final-form regulation.

B. Implementation Procedures and Reasonableness

Fourth, Section 1206(b) of the Act requires a verbatim transcript of all proceedings held at public meetings. Would the verbatim transcript include the proceedings of the executive session? In addition, assuming that the Board did intend to reference § 1206(f) of the Act, this section provides that confidential information supplied by the applicant pursuant to §1310(a) shall be released in certain law-enforcement related circumstances and “shall be released to the public, in whole or in part, to the extent that such release is requested by an applicant and does not otherwise contain confidential information about another person.” Would a transcript of an executive session be available for release under these circumstances? If not, how would the Board keep a “full and complete record” of the hearing, as required by 2 Pa.C.S. § 504 (relating to administrative hearings and record)?

Also, if an order is issued as a result of a licensing hearing, and the decision rendered is based on confidential information disclosed in executive session, how will the Board publish that order without revealing confidential information to the public?

The Act also provides that the denial of slot machine licenses is appealable to the Supreme Court. See 4 Pa.C.S. § 1204. If the verbatim transcript does not include the proceedings of the executive session, how will the applicant’s right to a meaningful appeal be protected? Will the Board provide notice to the parties that the transcript is available?

In order to resolve these issues, the final-form regulation should include appropriate administrative procedures for an executive session.

Finally, subsection (r)(2) provides that in order for an executive session to occur, the applicant must provide a “sufficient reason on the record” to “justify the invocation of confidentiality.” How would the Board determine what would be a “sufficient reason?” The term is vague and the final-form regulation

should define this term or include the criteria the Board will use to determine whether a reason is “sufficient.”

We also question whether imposing this burden of proof would result in an undue burden on the applicant, since it appears that confidentiality is a right imposed by the Act.

The final-form regulation should explain the imposition of this justification and how it is consistent with the Act.