



PhiladelphiaPark
CASINO

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Mickey Kane
Secretary
Pennsylvania Gaming Control Board
303 Walnut Street
P.O. Box 69060
Harrisburg, PA 17106-9060

Attn: Public Comment on Rulemaking #125-91

RE: Comments to Proposed Rulemaking #125-91

Dear Ms. Kane:

Greenwood Gaming and Entertainment, Inc. ("GGE") is the holder of a Category 1 slot machine license which authorizes GGE to operate Philadelphia Park Casino ("PPC") in Bensalem, Pennsylvania. GGE respectfully submits the following comments to the Pennsylvania Gaming Control Board (the "Board") in connection with the Board's proposed rulemaking, as captioned above, which was published in the *Pennsylvania Bulletin* at 38 Pa.B. 3980, on July 26, 2008.

The proposed rulemaking at issue significantly hampers the ability of slot machine licensees to attract, negotiate and contract with well-known consumer and retail businesses to operate at licensed facilities (i.e., casino complexes). The proposed regulations create a new licensing category—"onsite shopkeepers"¹—which is governed by various provisions in the proposed rulemaking. These "onsite shopkeepers" include restaurants, bars and retail shops, which are independent and separate businesses from a slot machine licensee. The "onsite shopkeeper" regulations would address the regulatory obligations of franchises and other businesses that engage in commercial activities at a licensed facility pursuant to a contractual relationship with a slot machine licensee. Specifically, the proposed rulemaking requires all "onsite shopkeepers" to be certified, which imposes burdensome regulatory requirements and administrative costs that significantly affect the ability of these tenant businesses to operate efficiently.

GGE strenuously objects to this proposed rulemaking because the cost and obligations of the proposed regulations will negatively impact the ability of slot machine licensees to attract the

¹ The proposed rulemaking defines an "onsite shopkeeper" as "[a] person, other than a slot machine licensee, who engages or proposes to engage in any commercial activity at the licensed facility and who is not otherwise required to be licensed, certified or registered." 58 Pa. Code § 401a.3 (*as proposed in Pennsylvania Bulletin*, 38 Pa.B. 3980).

desired franchises and businesses to their licensed facilities. “Onsite shopkeepers” are tenant businesses or franchises that are located within a licensed facility, but have no contact or involvement with gaming on the premises. These regulations place unreasonable obligations on such businesses because of the administrative and regulatory burden associated with the certification process. This proposed rulemaking and its consequences also undercut several objectives of the Pennsylvania Race Horse Development and Gaming Act (“Gaming Act”). See 4 Pa. C.S. § 1102(2), (6). As such, GGE strongly urges the Board to withdraw the proposed rulemaking and conduct a “stakeholders meeting” with the Pennsylvania slot machine licensees to discuss the various concerns about the “onsite shopkeeper” regulations and the general need to regulate such tenant businesses and their employees.

I. “Onsite Shopkeeper” Certification Process (58 Pa. Code §§ 434a.1 to 434a.2)

The Gaming Act does not address the issue of “onsite shopkeepers” or any standards by which such entities (and their employees) should be licensed. This absence is buttressed by the fact that the Legislature enumerated over thirty (30) specific powers of the Board, including the ability to regulate vendors. Section 1202(b)(20) of the Gaming Act grants to the Board the power “to determine at its discretion the suitability of any person who furnishes or seeks to furnish to a slot machine licensee directly or indirectly any services or property related to slot machines or associated equipment or through any arrangements under which that person receives payment based directly or indirectly on earnings, profits or receipts from slot machines or associated equipment.” 4 Pa. C.S. § 1202(b)(20). Section 1321(a)(2) of the Gaming Act expands this authority to persons who sell non-gaming related goods and services to casino complexes.

“Onsite shopkeepers” plainly do not fall within this vendor authority. Tenant businesses do not provide any goods, services or property to slot machine licensees. Rather, they sell goods and services to the consuming public—i.e., patrons—at establishments located in a licensed facility. With this proposed rulemaking, the Board recognizes that it has overstepped its authority by regulating these tenant businesses as vendors, and thus proposes creating its new category of onsite shopkeepers. However, neither the Board’s specifically enumerated powers under the Gaming Act, nor its general regulatory authority over gaming and related activities,² empowers it to regulate onsite shopkeepers. Accordingly, the Board should constrain its rulemaking to matters within its statutory enabling authority and refrain from expanding its regulation to tenant businesses and franchises.

While the Board has to date regulated these businesses as vendors, tenant businesses and franchises, in fact, should not be considered “vendors” under the Gaming Act and its corresponding regulations. The inclusion of “tenant businesses or franchises located within licensed facilities” in the current definition of a vendor is improper. See 58 Pa. Code § 401a.3 (Vendor (ii)(F)). This reference to tenant businesses should be deleted from the definition of “Vendor,” as contemplated in the proposed regulations. Moreover, should the Board decide to withdraw the proposed regulations, and thus retain the current definition of vendor, the Board should make clear that only those tenant businesses and franchises that satisfy the primary definition of “Vendor”—i.e., a person who provides goods or services to a slot machine licensee or applicant—will in fact be

² 4 Pa. C.S. § 1202(a)(1).

considered a vendor for registration and certification purposes. See 58 Pa. Code § 401a.3 (Vendor (i)).

Under the proposed rulemaking, all “onsite shopkeepers”—regardless of the size or the amount of business they do with the slot machine licensee—must be certified pursuant to the Board’s regulations. The Board asserts that the proposed rulemaking is modeled on the existing vendor regulations. See 58 Pa. Code §§ 437a.1 to 437a.11. The Board even acknowledges that the “onsite shopkeeper” application and its requirements are virtually identical to those of certified vendors pursuant to 58 Pa. Code § 437a.2. However, the proposed regulations are far more intrusive than the existing vendor regulations.

Under the existing vendor regulations (Chapter 437a), vendors that do less than \$200,000, and greater than \$15,000, in annual business with a slot machine licensee (or less than \$500,000 in business with all slot machine licensees) are registered, not certified. See 58 Pa. Code § 437a.1(a). However, the Board has eliminated the registration option for “onsite shopkeepers.” The application process for vendor registration is less complex and expensive than vendor certification. As a result, all businesses that lease space at a licensed facility and provide food, beverage or retail services will need to complete corporate applications and have their employees submit non-gaming employee registration applications. See 58 Pa. Code §§ 434a.2(a); 434a.3; 434a.5(b)-(c) (*as proposed in Pennsylvania Bulletin*, 38 Pa.B. 3980). These administrative and regulatory requirements will impede the ability of slot machine licensees to attract the most popular and well-known business establishments and their brands to their licensed facilities.

Therefore, GGE strongly suggests that the Board withdraw the proposed rulemaking because it lacks the specific and general authority to regulate tenant businesses and franchises. Moreover, GGE reiterates its recommendation that the Board conduct a “stakeholders meeting” with slot machine licensees to discuss the “onsite shopkeeper” regulations. If the Board insists on regulating “onsite shopkeepers,” GGE urges the Board to treat tenant businesses that will conduct commercial activities at a licensed facility in the same manner as vendors—i.e., requiring “onsite shopkeeper” registration and, if necessary, “onsite shopkeeper” certification. The Board should develop appropriate monetary thresholds for “onsite shopkeeper” registration and certification based on the amount of business each tenant business conducts at a licensed facility. In creating such thresholds, the Board must recognize the economic realities facing such businesses and the significant regulatory costs associated with certification by ensuring that such costs are only imposed on those tenants conducting a sufficient level of business at a licensed facility.

II. Licensing of “Onsite Shopkeeper” Employees (58 Pa. Code § 434a.5)

As previously noted, the most burdensome and costly provision of the proposed “onsite shopkeeper” regulations are those relating to the registration of the “onsite shopkeeper” employees. Pursuant to the proposed rulemaking, the Board would require all “onsite shopkeeper” employees whose duties require them to come into “contact with patrons of the licensed facility” to obtain a non-gaming employee registration. See 58 Pa. Code § 434a.5(b) (*as proposed*). Additionally, the proposed regulation contains a “catch-all” provision that grants the Board the power to require other employees of an “onsite shopkeeper” to obtain a non-gaming employee registration if the

Board deems their registration necessary “for the protection of the integrity of gaming”—regardless of whether these employees come in contact with patrons of the licensed facility.

With this proposed rulemaking, the Board posits that the waitresses, bartenders, cashiers and hostesses employed by an “onsite shopkeeper” should be treated the same for licensing purposes as their counterparts who are employed directly by the slot machine licensees, many of whom work on the casino floor. This argument is unreasonable and untenable. While food & beverage employees of slot machine licensees have access to the gaming floor and interact with patrons at slot machines³, the food & beverage personnel of “onsite shopkeepers” will not have such access. The “onsite shopkeeper” employees will be limited by the areas controlled by their employers. The Board cannot provide a reasonable rationale why “onsite shopkeeper” employees should be treated the same as slot machine licensee personnel. The following reasons further support GGE’s contention that the proposed regulations, as drafted, should not be adopted.

A. Risk to Patron Safety

The requirement that retail and food & beverage employees (e.g., waitresses, bartenders, sales associates and cashiers) obtain a non-gaming employee registration is far too onerous a threshold for the conduct in question—interacting with patrons at a licensed facility. This is especially true in light of the Board’s objectives to ensure the integrity of gaming and the safety of the gaming public. The Board’s concern that “onsite shopkeeper” employees can commit some sort of fraud against patrons is misplaced because none of these employees (i) have knowledge of patrons’ casino play or (ii) access to the slot monitoring or player tracking systems. Hence, these employees cannot authorize or grant complimentary services based on slot play. It is also likely that many of the patrons of a casino’s retail or food & beverage outlets will not be “gaming patrons,” but will be visiting the property for the exclusive purpose of dining at one of the restaurants/bars or shopping at one of the retail outlets. There is absolutely no discernible public benefit to warrant such regulatory obligations.

B. Integrity of Gaming Operations

There is no enhanced risk to the integrity of a slot machine licensee’s gaming operations because retail and food & beverage employees work in areas adjacent to the gaming floor. “Onsite shopkeeper” employees do not work on the gaming floor and have no reason to go onto the floor or into restricted areas or come in contact with slot machines or associated equipment during working hours. The duties and responsibilities of retail and food & beverage employees have no connection with the monitoring of gaming activities or the collection of gaming revenues.

³ Additionally, GGE notes that requiring slot machine licensees’ food and beverage employees to obtain a non-gaming employee registration is also unreasonable and excessive. In fact, the only reasonable rationale for the Board’s proposed regulation for “onsite shopkeeper” employees is the underlying policy that retail and food & beverage employees of slot machine licensees should be required to register with the Board. While this public comment addresses Proposed Rulemaking No. 125-91, GGE believes that a review of the licensing requirements for slot machine licensees’ food & beverage employees could prove relevant in this discussion.

C. Cost

The employee turnover rate in the food & beverage industry is so high that slot machine licensees and “onsite shopkeepers” can expect to expend thousands of dollars annually to cover the \$60.00 fee for each food & beverage employee, who is required to submit a non-gaming employee registration application. Please be aware that slot machine licensees’ restaurant and retail tenants operate on very tight margins and cannot afford, especially under the current economic situation, to incur additional administrative and regulatory costs in the form of registration fees.

D. Administrative Burden

“Onsite shopkeepers” will find the Board’s non-gaming employee registration process particularly burdensome since they do not have the on-site human resources personnel to administer the non-gaming employee registration process, which includes accessing SLOTSlink, obtaining fingerprints and photographs from the Pennsylvania State Police and submitting all materials for each employee to the Board’s Bureau of Licensing. These administrative burdens as well as the costs associated with registering employees with the Board will undoubtedly deter prospective tenants from bringing their businesses to Pennsylvania casinos, resulting in the loss of economic and entertainment opportunities for the citizens of the Commonwealth.

III. **Conclusion**

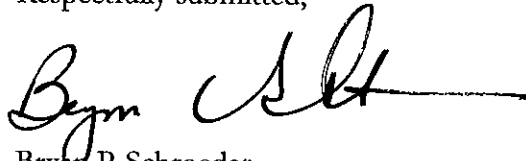
GGE strenuously objects to this proposed rulemaking because the cost of the proposed regulations will negatively impact the ability of slot machine licensees to attract the desired franchises and businesses to their licensed facilities. GGE believes that the financial and administrative burdens associated with licensing nearly every employee of “onsite shopkeepers” far outweigh any possible public benefit from the proposed rulemaking. If these proposed regulations become effective, tenant businesses will be deterred from occupying space within Pennsylvania’s casinos. As a result, Pennsylvania’s casinos will operate at a competitive disadvantage from neighboring jurisdictions and the Commonwealth will see ever diminishing revenues due to the lack of high quality entertainment and retail businesses.

Besides objecting to the proposed rulemaking, GGE requests that the Board remove all proposed regulations referring to “onsite shopkeepers.” In addition, GGE request that the Board eliminate the reference to “tenant businesses and franchises located within licensed facilities” from the definition of “Vendor” in 58 Pa. Code § 401a.3 because such entities plainly do not qualify under the primary definition of a vendor.

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Thank you for considering the comments of GGE in connection with the proposed regulation. GGE will be happy to answer any questions that the Board may have on these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bryan P. Schroeder", with a long horizontal flourish extending to the right.

Bryan P. Schroeder
Assistant General Counsel
Greenwood Gaming & Entertainment, Inc.

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cc: Arthur Cocodrilli, Independent Regulatory Review Commission (via Federal Express)