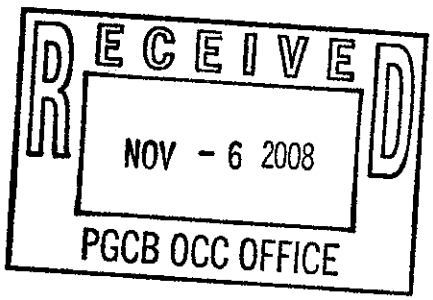
Sands®
CASINO·RESORT[BETHLEHEM



3

November 3, 2008

Mr. Richard Sandusky
Director of Regulatory Review
Pennsylvania Gaming Control Board
303 Walnut Street/Strawberry Square
Verizon Towers – 5th Floor
Harrisburg, PA 17101

Re: Public Comment on Regulation #125-93, Specifically regarding Proposed Rulemaking §493a.10a Motions to Protect Confidential Information.

Dear Mr. Sandusky:

The Pennsylvania Gaming Control Board has proposed an amendment to 58 Pa. Code § 493a. This proposed Code section is entirely new and does not amend any existing provision in the Regulations. The proposed amendment reads as follows:

493a.10a. Motions to protect confidential information.

(a) A party or individual may seek to protect confidential information under § 407a.3 (relating to confidential information) in pleadings and other papers by filing a Motion to Protect Confidential Information.

(b) A Motion to Protect Confidential Information must:

(1) Set forth the specific reasons why the information should be deemed to be confidential information and, therefore, protected.

(2) Label as confidential documents or portions of documents in the filing that the party or individual is seeking to protect.

(c) Upon the filing of the Motion to Protect Confidential Information, the Director of Hearings and Appeals will review the motion and accompanying documents and may, upon determining that a substantial basis exists, issue an interim order to protect the documents from disclosure until the Board considers the matter in accordance with 65 Pa.C.S. §§ 701--716 (relating to open meetings).

511 East Third St. Bethlehem, PA 18015 484.777.7777 www.PaSands.com

We believe this proposal fails to incorporate and by inference casts doubt on existing safeguards for confidential information. The Gaming Act provides that information submitted to the Board is confidential: "[a]ll information submitted by an applicant pursuant to section 1310(a) (relating to slot machine license application character requirements) or obtained by the board or the bureau as part of a background investigation from any source *shall be considered confidential.*" 4 Pa. CS 1206(f) (emphasis added). 58 Pa. Code 407a.3 not only defines "Confidential Information," but restricts the circumstances under which, and to whom such confidential information may be disclosed. The exceptions to confidentiality are to "State or Federal law enforcement agencies or entities upon approval of the Attorney General or pursuant to a lawful order issued by court of competent jurisdiction", or to the public only if the party or individual *requests* disclosure of the information or the party or individual's actions make the information part of the public domain. *See* (b)(2)(i)-(ii) (emphasis added).

We understand that the Proposed Rulemaking affords the applicant with an opportunity to protect confidential information from disclosure by permitting that a party or individual may file a "Motion to Protect Confidential Information" in pleadings and other papers filed with the Board. Nothing more than a citation to the Gaming Act or to the existing regulations should be required. Otherwise, the proposal suggests that the confidentiality provisions have been diminished by indirection.

However, the proposal states that the party or individual must set forth specific reasons the information should be deemed to be confidential, and therefore protected, and must proactively label any documents or portions of documents that are filed with the Board as confidential. This statement appears to us to operate as a *sub silentio* burden shifting that is contrary to the Gaming Act and existing regulations.

We do not understand the reason that a motion would be necessary at all to protect information that is already deemed by statute and regulation to be confidential. The Board would already know that the information is confidential based on the Gaming Act and its own regulation so we are at a loss to understand the reason that an applicant or licensee would be required to point out to the Board what is readily determinable by the Board. By the addition of a requirement to set forth "specific reasons," the implication is that evoking the statutory and regulatory sections that provide confidentiality as a matter of right [4 Pa. CS 1206(f); 58 pa. Code 407a.3] will be insufficient.

There is unanimity on confidentiality in other gaming jurisdictions All of the twelve states that permit commercial gaming have regulatory provisions that provide for confidential treatment of sensitive personal information. We offer the following citations: Colorado: **Colo. Rev. Stat. § 12-47.1-527 and 47 Colo. Code Regs. 1-307**; Illinois: **230 Ill. Comp. Stat. 10/6(d) (2008)**; Indiana: **Ind. Code § 4-33-1 *et. seq.***; Iowa: **Iowa Code § 99F.1 *et. seq.***; Louisiana: **La. Rev. Stat Ann. § 27:21(A)(2)(2008)**; Kansas: **Kansas Expanded Lottery Act. §14*)***; Michigan: **Mich. Comp. Laws Serv. § 432.205(4) (2008) *432.204c(1)(a)-(c))***; Mississippi: **Miss. Code Ann. §75-76-19 (2008)**; Missouri: **Mo. Rev. Stat. § 313.847 (2008) and Mo. Code Regs. Ann. Tit. 11, § 45-3.010(4)**; Nevada: **Nev. Rev. Stat. § 463.120(4)(2008);** New Jersey: **N.J.S.A.**

5:12-74(d-e); N.J.A.C. 19:40-4.1 *et seq.*;; and South Dakota: **S.D. Codified Laws § 42-7B-21 (2008).**

We are further concerned that this proposal may be part of an untoward trend. See Proposed Regulation #125-86 that would permit the Board to request that an applicant disclose confidential information at a licensing hearing. See also Proposed Regulation #125-84 that could erode the protections afforded confidential information by requiring the applicant to provide information to the Gaming Control Board available to the applicant or licensee under the Freedom of Information Act without making clear that the information retains its confidential nature when delivered to the Board.

For the above reasons, we request that the proposal either be abandoned or be substantially re-written to remove any actual or potential inconsistent provisions with existing protections of confidential information.

We appreciate the consideration of these comments.

Regards,

Robert J, DeSalvio
President

C: F. Kraus
H. Eicher