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INDEPENDENT REGULATORY REVIEW COMMISSION
 333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 22, 2009

Frank Donaghue, Acting Executive Director
 Pennsylvania Gaming Control Board
 Strawberry Square
 Verizon Tower, 5th Floor
 Harrisburg, PA 17106-9060

Re: Regulation #125-97 (IRRC #2748)
 Pennsylvania Gaming Control Board
 Vendor Permission to Conduct Business Prior to Certification or Registration

Dear Mr. Donaghue:

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.

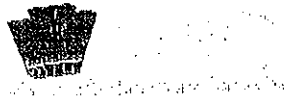
The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
 Executive Director
 wbg
 Enclosure

cc: Honorable Jane M. Earll, Chair, Senate Community, Economic and Recreational
 Development Committee
 Honorable Wayne D. Fontana, Chair, Senate Community, Economic and Recreational
 Development Committee
 Honorable Dante Santoni, Jr., Chair, House Gaming Oversight
 Honorable Curt Schroder, Chair, House Gaming Oversight

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board Regulation #125-97 (IRRC #2748)

Vendor Permission to Conduct Business Prior to Certification or Registration

April 22, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the February 21, 2009 *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.

Section 437a.9. Permission to conduct business prior to certification or registration. -- Fiscal impact; Reasonableness; Implementation procedure; Feasibility; Clarity.

Due notice – form and delivery method

New language in both Subsections (b) and (c) refers to an Office or Bureau of the Board issuing a “notice” or “notifying” parties that they are to “immediately cease conducting business.” However, there is no explanation of how these notices will be delivered. One commentator contends that a telephone call or facsimile from the agency would not be sufficient notice. It suggests that the notice should be in the form of a letter. The final-form regulation should be amended to specify the delivery methods for the notices (such as electronic, hand-delivery or first class mail) and to state that the notices will be in writing.

Grace period

Commentators expressed concerns with the potential delays, disruptions, work stoppages and additional costs that this proposed regulation could cause. As alternatives or amendments to the proposed regulation, commentators suggested that vendors should be afforded an opportunity to respond to the issues that led to the “Recommendation for Denial” by the Office of Enforcement Counsel. One commentator suggested that the regulation include

a "30 day winding-up period" before ordering a cessation of business between the vendor and a licensee.

It should be noted that under the Board's existing regulations, the approval, which allows vendor applicants to conduct business before registration or certification, exists only for six months. The Board may extend this arrangement for additional six-month periods. Consequently, licensees should be cautious about committing to long-term projects with such vendors. Nevertheless, licensees and vendors may be engaged in contracts and business projects that could take several weeks or months to complete. Therefore, the Board needs to address concerns of these parties with the prospect of being forced to immediately terminate their business interactions. The addition of some form of grace period to the final-form regulation could reduce concerns over the fiscal impact of this regulation.

Due process

Under section 437a.9(c), a vendor applicant's privilege to do business with a licensee is suspended upon issuance of a Notice of Recommendation for Denial. Commentators are concerned that such a suspension could infringe on the due process rights of vendor applicants. The Preamble and proposed regulation do not explain whether or how the Board would act on such a recommendation, how the vendor applicant could protest the action of the Office of Enforcement Counsel or the Board, or whether this section requires Office of Enforcement Counsel to fill a prosecutorial role in violation of the decision in *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992).

The final-form regulation should clarify how and when the Board takes action in this circumstance, how the vendor applicant's due process rights will be affected, and the nature of the role of the Office of Enforcement Counsel.

Need for the rule; Reasonableness

Currently, Section 437a.9 allows applicants for vendor registration or certification to do business with licensees before their applications are approved. The proposed regulation provides for the cessation of these pre-registration or certification transactions. We have two questions concerning this section. Why are vendor applicants allowed to engage in business with licensees before their applications are fully examined and approved? What is the need for this arrangement? The Board should explain the rationale and justification for both the existing section and the proposed regulation in the preamble to the final-form regulation.