RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 440]

Response to Public Comment

Subpart A. GENERAL PROVISIONS

CHAPTER 401. PRELIMINARY PROVISIONS

§ 401.4. Definitions.

Comment:

The proposed definition in section 401.4 of "Collateral Agreement" encompasses "any contract that is related either directly or indirectly to a management contract or to any rights, duties, or obligations created between a management company and a slot machine licensee." This definition appears to be extremely broad by its reference to indirect rights, duties or obligations. For example, a management agreement may require the management company to provide benefits to its employees. The management company may enter into agreements with health care providers, third party administrators, etc. Under the proposed definition, each such agreement would be deemed a "collateral agreement."

The term “collateral agreement” is then used in the definition of “Management contract.” Each management contract is subject to the approval of the PGCB before it is deemed effective pursuant to proposed section 440.3. Under this scenario any agreement between a management company and a third party which in any way relates to the management company’s obligations under the management agreement would require prior Board approval.

Such a result would create an overly burdensome process for the Board and the management company. It would create an unequal situation wherein a contract for goods or services between a third party and licensee would not be subject to prior approval by the Board. Yet a contract for those same goods or services would require prior Board approval if it was entered into by a management company. It does not appear that such disparate treatment is intended by the Board.

It is respectfully suggested that the definition of collateral agreement be deleted and the term be deleted from the definition of management contract. The Board would retain prior approval powers for the management agreement.

Response:

The Board declines to accept the suggestion to delete this definition but has amended the language of this definition to provide further clarity.

Comment:

It is respectfully suggested that the definitions of "management company" and "management contract" be amended as follows:

Management company – Any person or legal entity, which, through a Board-approved contract with a slot machine licensee, is responsible for the management of all or part of the gaming operation of a licensed facility.

Management contract – Any contract or subcontract between a management company and a slot machine licensee if such contract provides for the management of all or part of the gaming operations of a licensed facility.

The foregoing suggested changes would clarify that agreements to manage food, beverage or entertainment venues within a licensed facility would not be subject to the provisions of the proposed regulation.

Response:

The Board declines to accept this recommendation as the Board believes that the definition of "licensed facility" is sufficient.

Subpart B. LICENSING, REGISTERING, CERTIFYING AND PERMITTING

CHAPTER 440. MANAGEMENT COMPANIES

§ 440.1 Management company license.

Section 440.1(c) would require a management company application to be submitted by the slot machine licensee or applicant. It is respectfully suggested this provision be amended to allow the management company the option of submitted its application directly to the Board as any other applicant.

Response:

The Board declines to accept this recommendation as the requirements set forth for management companies are consistent with those of vendors.

§ 440.2. Management company as agent.

Comment:

We are interested in knowing the rationale for imposing liability on both the management company and the slot machine licensee for any act or omission that violates the Board's rules and regulations, regardless of actual knowledge on the part of the entity who did not commit the violation. Has the Board considered requiring both

entities having liability insurance policies naming each other as insured parties?

Comment:

Subparagraph (b) provides that a management company shall be jointly and severally liable for any act or omission by the slot machine licensee in violation of the act, regardless of actual knowledge. The imposition of strict liability without any culpability is draconian and we do not understand the purpose such a requirement would serve. Responsibility for violations can be determined by the Board in the hearing process. The financial ability of the responsible party to pay any penalty should not be in doubt in light of the financial stability requirements of the law. On the other hand, imposing liability on an innocent party has repercussions on that party outside of Pennsylvania. Doing so places a blemish on the licensing record of the innocent party, a matter which is of concern to regulatory authorities wherever that innocent party is licensed. There are many matters which a manager will not have any control over which could needlessly result in joint liability under this provision. For example, a manager should not be responsible if the slot machine licensee fails to comply with the requirements for the appointment of a new officer.

Response:

This provision is based on Pennsylvania agency law, and on the Board's policy decision to require that both parties to a management contract be jointly and severally liable for the acts of the other party. The Board believes that the relationship between the management company and the slot machine licensee is such that each entity must be vigilant concerning the actions of the other party to the management contract. The Board has determined that no further changes are in order.

§ 440.3 Management contracts generally.

Comment:

Subparagraph (f) provides that a slot machine licensee and a licensed management company shall not contract for the delegation of any benefits, duties, or obligations specifically granted to or imposed upon the slot machine licensee by the Act. Frankly, we are not sure what this means. Generally in the industry, management agreements cede to the manager many obligations that are duties or obligations of the licensee. If there are specific duties or obligations that a licensee cannot assign to a manager, they should be clearly set out in the regulations.

Response:

The parties must prove that the approval of the management contract would not be in violation of any provision of the Act nor the spirit or intent of the Act. The Board will review each management contract, collateral agreement, and specifically delegated benefits, duties and obligations, as a whole. The prohibition concerning delegation is not necessarily dependent upon any single duty or obligation, but rather, the collective duties and obligations assigned to each party. The Board therefore declines to accept this recommendation.