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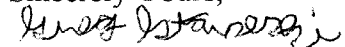
OCT 17 2005

PAGCB
P.O Box 69060
Harrisburg, PA 17106-9060
Attention: Public Comment

To the members of the Pa gaming control board,

I am supporting the draft regulations for the movement and ownership of slot machines.

Sincerely Yours,


Greg Stanseski

t

Topic: Slot machine movement & ownership



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OCT 28 2005

October 27, 2005

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA, 17106-9060
Attn: Public Comment

Dear Chairman Decker and Members of the Pennsylvania Gaming Control Board:

On behalf of the Pennsylvania Bar Association Gaming Law Committee, we are pleased to submit the enclosed comments on the Proposed Regulations – 58 PA. Code Chapters 441 and 463.

The PBA's Gaming Law Committee prepared these comments, after a careful review of the draft regulations. None of these comments are on behalf of any particular potential applicant or constituency, but rather reflect the insights of a broad base of Pennsylvania lawyers (including government and enforcement employees).

The enclosed comments contain specific references to the section number and topics discussed.

For the record, the contact information for the Pennsylvania Bar Association Gaming Law Committee is as follows:

Pennsylvania Bar Association

Attention: PBA Gaming Law Committee
Louann Bell, Committee Relations Coordinator

We would be pleased to meet with any members of the Board or the staff of the Board to further explain any of the attached comments. The contact information for the officers of the PBA Gaming Law Committee is as follows:

Chair:

Christopher A. Lewis
Blank Rome LLP

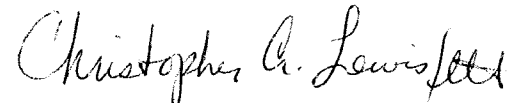
Vice-Chairs:

Edward W. Diggs
Kirkpatric & Lockhart LLP

Robert P. Krauss
Ballard Spahr Andrews & Ingersoll LLP

Thank you for your consideration of this submission. With kind regards, I am

Very truly yours,



Christopher A. Lewis

CAW/lfb

MEMORANDUM

To: Pennsylvania Gaming Control Board

From: Pennsylvania Bar Association--Gaming Law Committee

Date: October 27, 2005

Re: Proposed Regulations--Section 441.18 and Chapter 463

In addition to the comments set forth in the attached "mark-up" of these Proposed Regulations, we have two additional comments:

Comment 1--Section 441.18. Our Regulatory Subcommittee discussed at length the proposed language and the language of Section 1330 of the Pennsylvania Race Horse Development and Gaming Act (the "Act"). After a spirited discussion, there were clearly two points of view, one limiting multiple ownership the other providing for unlimited multiple ownership of additional 33.3% ownership interests. We believe it would be helpful in avoiding future challenges to this Regulation, to make available the reasoning of the Board, including any legal opinions rendered to the Board, supporting the multiple ownership provisions of this Proposed Regulation.

Comment 2--Section 441.18(a). Regulations 427.2(a)(7) and 441.4(a)(11) refer only to ownership interests (directly and indirectly), not to ownership "or a financial interest". It does not appear that the term "financial interest" is defined in the Act or in the Regulations except for the definition limited to Section 1512 of the Act. The three Regulations should be consistent and, if the term "financial interest" is retained, a definition should make clear the difference between an ownership interest and a financial interest. Certain members of the subcommittee are concerned that contracting parties may be deemed to have a "financial interest" in a licensee. For example, certain licensees may lease slot machines or may participate in wide area network mega jack-pot programs, where, in each case, the provider of the machines or network receives a percentage of slot play or gross gaming revenue.

RPK/er
Attachment

DRAFT COMMENTS**RULES AND REGULATIONS****TITLE 58. RECREATION****PENNSYLVANIA GAMING CONTROL BOARD****[58 PA. CODE CHS 441 and 463]****PREAMBLE**

The Pennsylvania Gaming Control Board (Board), under authority in 4 Pa.C.S. § 1202 (relating to General and specific powers), has drafted temporary regulations to facilitate the prompt implementation of 4 Pa.C.S. Part II (relating to Gaming), enacted by the act of July 5, 2004 (P.L. 572, No. 71). Upon adoption of the regulations by the Board, the Board's temporary regulations will be added to 58 Pa. Code, Recreation, Part VII (relating to Gaming Control Board). By publishing these temporary regulations in draft form, the Board seeks public comment prior to the adoption of the regulations.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections to the draft temporary regulations via United States mail to the Pennsylvania Gaming Control Board, Office of Communications, P.O. Box 69060, Harrisburg, PA 17106-9060, ATTN: Public Comment. The public comment period will end on October 28, 2005.

THOMAS A. DECKER,**Chairman**

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CHAPTER 441. SLOT MACHINE LICENSES

§ 441.18. Change in ownership or control of slot machine licensee and multiple slot machine license prohibition. [See Comment One].

(a) Pursuant to a change in ownership or control of a slot machine licensee under section 1328 of the act and in accordance with section 1330 of the act (relating to multiple slot machine license prohibition), a slot machine licensee, including its affiliates, intermediaries, subsidiaries and holding companies, is prohibited from possessing an ownership [or financial **(a)**

is “financial interest” defined anywhere?; (b) see and compare Regulations 427.2(a)(7) and 441.4(a)(ii) - See Comment Two] interest in any other slot machine licensee or in any other person eligible to apply for a Category 1 slot machine license or its affiliates, intermediaries, subsidiaries or holding companies that exceeds 33.3%.

(b) Nothing in subsection (a) shall be construed to prevent a slot machine licensee from possessing ownership or financial interests of 33.3% or less, in multiple slot machine licensees or in persons eligible to apply for a Category 1 slot machine license or its affiliate, intermediary, subsidiary their respective affiliates, intermediaries, subsidiaries or holding company companies.

(c) If a slot machine licensee or its affiliates, intermediaries, subsidiaries or holding companies has an ownership or [financial interest - see above] in another slot machine licensee that is in violation of subsection (a), the licensee will be required to divest that interest which is in excess of 33.3% in compliance with section 1330 of the act {relating to multiple slot machine license prohibition).

Subpart E. SLOT MACHINE TESTING, CERTIFICATION AND CONTROL

CHAPTER 463. POSSESSION OF SLOT MACHINES

§ 463.1. Possession of slot machines generally.

(a) Except as otherwise provided in this section and 18 Pa.C.S. § 5513 (relating to gambling devices, gambling, etc.), no person shall possess within this Commonwealth any slot machine which may be used for gambling activity.

(b) The following persons and any employee or agent acting on their behalf may, subject to any terms and conditions imposed by the Board, possess slot machines in the Commonwealth for the purposes provided herein provided that the slot machines are kept in such

locations as shall be specifically approved in writing, or in such electronic format as is approved by the Board, [see §463.2] by the Board and that any slot machines located outside of a licensed facility not be used for gambling activity:

- (1) An applicant [how can an applicant have these powers?] for, or holder of:
 - (i) A slot machine license, for the purpose of maintaining for use or actually using such machines in the operation of a licensed facility.
 - (ii) A manufacturer license for the purpose of manufacturing, exhibiting, demonstrating or training, preparing for transfer to a supplier licensee and/or providing initial installation services pursuant to an agreement with a supplier licensee under section 431.3 (relating to supplier requirements and prohibitions).
 - (iii) A supplier license for the purpose of distributing, repairing, servicing, exhibiting, and/or demonstrating slot machines and any training with regard thereto.
- (2) An educational institution, as authorized by the Board, for the purpose of teaching slot machine design, operation, repair or servicing.
- (3) A manufacturer or supplier of slot machines not licensed within the Commonwealth, as authorized by the Board, for the limited purpose of temporary exhibition or demonstration of same.
- (4) A common carrier, for the purpose of transporting such slot machines in accordance with provisions of section 463.2 (relating to the transportation of slot machines into, within and out of the Commonwealth).

(5) An employee or agent of the Board, the Pennsylvania State Police or any law enforcement agency of the Commonwealth for the purpose of fulfilling official duties or responsibilities.

(6) Any other person the Board may approve after finding that the possession of slot machines by such person in this Commonwealth is necessary and appropriate to fulfill the goals and objectives of the act.

§ 463.2. Transportation of slot machines into, within and out of the Commonwealth.

In furtherance of section 1511 of the act (relating to the Declaration of exemption from federal laws prohibiting slot machines), prior to the transport or movement of any slot machine into the Commonwealth, from one person authorized to possess slot machines pursuant to section 463.1 (relating to possession of slot machines generally) to another person so authorized within the Commonwealth or transport or movement out of the Commonwealth, those persons causing such slot machine to be transported or moved shall first notify the Board's Director of Gaming Laboratory Operations, in writing or in such electronic format as is approved by the Board. Such notice shall be submitted no later than the day the slot machine is transported or moved and shall include the following information:

- (a) The name and address of the person shipping or moving the slot machine.
- (b) The name and address of the person who owns the slot machine, if different from the person shipping or moving such machine.
- (c) If applicable, the name and address of any new owner in the event ownership is being changed in conjunction with the shipment or movement.
- (d) The method of shipment or movement and the name and address of the common carrier or carriers, if applicable.

(e) The name and address of the person to whom the slot machine is being sent and the destination of the slot machine, if different from such address.

(f) The quantity of slot machines being shipped or moved and the manufacturer's serial number of each machine.

(g) The expected date and time of delivery to, or removal from, any authorized location within the Commonwealth.

(h) The port of entry, or exit, if any, of the slot machine if the origin or destination of the slot machine is outside the continental United States.

(i) The reason for transporting or moving the slot machine.

§ 463.3. Slot machine authorized locations.

Each slot machine on a gaming floor shall be placed at an authorized ~~location~~area identified ~~by number~~ on a gaming floor plan approved by the Board pursuant to section 1322 of the act (relating to slot machine accounting controls and audits) and shall also be identified by number and location on a Slot Machine Master List, which may be changed, from time to time, upon written notice to the Director of Laboratory/Technical Operations.

§ 463.4. Connection to the central computer system.

Prior to its utilization for gambling activity, each slot machine on a gaming floor shall be connected or linked to a central computer system having the capabilities and pursuant to the terms of section 1323 of the act (relating to central control computer system).

§ 463.5. Slot machine master list.

(a) Prior to the commencement of operations at a licensed facility, each slot machine licensee shall file with the Board's Director of Gaming Laboratory/Technical Operations, in writing or in such electronic format as is approved by the Board, a comprehensive list of slot machines possessed by the licensee on its gaming floor, in Board approved restricted areas off

the gaming floor but within the licensed facility, and in Board approved storage locations in Pennsylvania off the premises of the licensed facility. Such list shall be denoted as a Slot Machine Master List and shall contain the following information which, for those slot machines located on the gaming floor, shall be presented for each slot machine in consecutive order by ~~authorized location~~ authorization number:

- (1) The date the list was prepared.
 - (2) A description of each slot machine by:
 - (i) Asset, model and manufacturer's serial number.
 - (ii) Denomination, if configured for multiple denominations so designate.
 - (iii) Manufacturer and machine type, noting with specificity whether the machine is a high-boy/ is a progressive or a wide area progressive slot machine.
 - (iv) An indication as to whether the slot machine has an activated electronic transfer credit feature.
 - (v) An indication as to whether the slot machine has an activated gaming voucher feature, and, if so, whether such feature is in lieu of a hopper.
 - (3) For those slot machines located off the gaming floor, an indication as to whether the slot machine is in a Board approved restricted area off the gaming floor but within the licensed facility or in a Board approved storage location in Pennsylvania off the premises of the licensed facility.
 - (4) Such other information as the Board may require.
- (b) Once a slot machine has been placed in an authorized location on the gaming floor or is stored in a Board approved restricted area off the gaming floor but within the licensed

facility, all subsequent movements of that slot machine from or to a location within that licensed facility shall be recorded by a slot department member in a machine movement log which shall include the following:

- (1) The asset, model and manufacturer's serial number of the moved slot machine.
- (2) The date and time of movement.
- (3) The location from which the slot machine was moved.
- (4) The location to which the slot machine was moved.
- (5) The date and time of any required notice to the department in connection with activation or disabling of the slot machine in the central computer system.
- (6) The signature of the slot shift manager and the lead technician verifying the movement of the slot machine in compliance with this section.

Documentation summarizing slot machine movements within a licensed facility shall be submitted to the Board's Director of Gaming Laboratory/Technical Operations, in writing or in such electronic format as is approved by the Board, on a daily basis.

(c) On the first Tuesday of each month following the initial filing of a Slot Machine Master List/ each slot machine licensee shall file with the Board's Director of Gaming Laboratory/Technical Operations, in writing or in such electronic format as is approved by the Board, an updated Slot Machine Master List documenting all slot machines possessed by the licensee on its gaming floor, in Board approved restricted areas off the gaming floor but within the licensed facility, and in Board approved storage locations in Pennsylvania off the premises of the licensed facility. Such updated list shall be in a form, and contain the information, required in subsection (a).

(d) Manufacturer licensees, supplier licensees, educational institutions, Board authorized manufacturers and suppliers not licensed within the Commonwealth and regulatory and law enforcement agencies having authority to possess slot machines pursuant to section 463.1 (relating to possession of slot machines generally) who cause slot machines to be transported or moved shall file with the Board's Director of Gaming Laboratory/Technical Operations, in writing or in such electronic format as is approved by the Board, a comprehensive list of slot machines possessed by said person. Such list shall be denoted as a Slot Machine Master List and shall be filed within three business days of the initial receipt of slot machines and shall contain the following information:

- (1) The date on which the list was prepared.
- (2) A description of each slot machine by:
 - (i) Model and manufacturer's serial number.
 - (ii) Manufacturer and machine type, noting with specificity whether the machine is a high-boy, is a progressive or a wide area progressive slot machine.

(e) On the first Tuesday of each month following the initial filing of a Slot Machine Master List, those persons enumerated in section (d) shall file with the Board's Director of Gaming Laboratory/Technical Operations, in writing or in such electronic format as is approved by the Board, an updated Slot Machine Master List. Such updated list shall be in a form, and contain the information, required in subsection (d).

§ 463.6. Notice to central computer system.

In addition to the recordkeeping requirements required hereunder, prior to the placement of a slot machine on the gaming floor, any movement of that slot machine from or to authorized ~~locations~~areas within a licensed facility or removal of a slot machine from the gaming floor, the

slot machine licensee shall provide the Department with notice of the slot movement, in a form and pursuant to a time frame prescribed by the Department, in order to insure activation or disabling, as appropriate in the central computer system and the retrieval of real time meter information from the slot machine coincident with the movement.



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October 28, 2005



HARRAH'S
ENTERTAINMENT,
INC.

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060

Attention: Public Comment

Re: Comments on Proposed Regulations; Chapter 463 Slot Machine Testing, Certification and Control

Dear Chairman Decker and Board Members:

The following comments regarding the Proposed Regulations; Chapter 463 Slot Machine Testing, Certification and Control are offered for your consideration by the operating subsidiaries of Harrah's Entertainment, Inc. (collectively "Harrah's").

Section 463.1

It is respectfully requested that language be added in Section 463.1(b)(1) to explicitly authorize an applicant for or holder of a slot machine license to possess slot machines for the additional purpose of training or teaching. The addition of this concept would be consistent with the provisions of subsection (b)(2) which authorizes educational institutions to possess slot machines ". . . for the purpose of teaching slot machine design, operation, repair or servicing."

Section 463.3

It is respectfully requested that the Board consider adding a provision that provides that a licensee may place slot machines in locations off the gaming floor but within its facility for promotional activities and events such as contests or tournaments. The use of slot machines for these purposes would not be "gambling activity" as there is no "wagering" involved. For these types of events the slot machines are equipped with tournament games or chips and are configured for tournament play. In a number of jurisdictions tournaments and contests are held off the gaming floor for a variety of reasons such as space constraints. Areas in which these events are held include convention space. Adding a provision specifically authorizing the use and placement of slot machines off the casino floor for this type of promotional activity would appear to be appropriately placed in Section 463.3.



Pennsylvania Gaming Control Board
October 28, 2005
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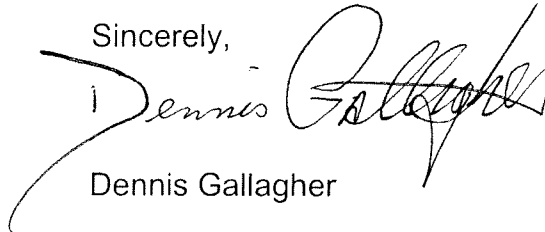
Section 463.5

Section 463.5(a)(2)(iii) would require a licensee to create a slot machine master list to provide certain information regarding its slot machines including noting whether a particular unit ". . . is a progressive or wide area progressive slot machine." The master list would be updated monthly.

The configuration of a slot machine as a progressive, part of a wide area progressive or a stand alone unit can be changed. Are such configuration changes permissible between master list updates?

Harrah's appreciates the opportunity to provide these comments to the Board. Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in black ink that reads "Dennis Gallagher". The signature is written in a cursive style with a large, sweeping initial "D".

Dennis Gallagher

DG:pjr

HANGLEY
ARONCHICK
SEGAL
&
PUDLIN

Attorneys at Law | A Professional Corporation

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OCT 31 2005

Mark A. Aronchick

October 28, 2005

VIA First Class Mail

The Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
Attention: Public Comment

Re: Proposed Regulation 441.18

Dear Chairman Decker and Board Members:

The following comments regarding proposed Regulation 441.18 are offered for your consideration by the undersigned on behalf of the operating subsidiaries of Harrah's Entertainment, Inc.

We believe that the Board has correctly interpreted Sections 1328 and 1330 of the Pennsylvania Race Horse Development and Gaming Act (the "Act") to allow slot machine licensees simultaneously to hold an ownership interest in two or more slot machine licenses when a change in ownership or control as defined by Section 1328 takes place. The language of the proposed regulation, which closely tracks the language of Section 1330, accurately reflects the intent of the General Assembly. *See* 1 Pa. C.S. § 1921(b). Section 1330 is the portion of the Act that primarily addresses the issue of multiple ownership interests. Had the General Assembly intended to limit slot machine licensees to ownership or financial interests in only two or fewer licenses, the General Assembly would have plainly stated that intention in Section 1330. Nothing in Section 1330, Section 1328 or the rest of Act suggests that such a narrow reading of the Act is appropriate, nor would a narrow reading comply with the rule of statutory construction that provisions of a statute such as the Act "shall be liberally construed to effect their objects and to promote justice." 1 Pa. C.S. § 1928(c).

An overly strict construction of Sections 1328 and 1330 would needlessly circumscribe the substantial discretion that the General Assembly has given the Board to determine who will be permitted to operate a licensed facility. *See* 4 Pa. C.S. §§ 1202(b)(7), 1204, 1325(a), 1327. The Board has been given this broad discretion so that it can strike the appropriate balance to best ensure that licenses are held by those persons who have the ability and experience to make Pennsylvania's nascent gaming industry a success and

SMD-4.1

The Pennsylvania Gaming Control Board
October 28, 2005
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maximize revenues for the Commonwealth while maintaining reasonable restrictions on the control of multiple licensed gaming facilities and safeguarding the industry's integrity. *See* 4 Pa. C.S. § 1102(3), (5), (6); *id.* § 1313(d), (e). Adopting a regulation that limits licensees and all of their affiliates, subsidiaries, intermediaries and holding companies collectively to ownership interests in two or fewer licenses when a change or control or ownership takes place could prevent the Board from fully exercising its discretion to ensure that the 14 available licenses are held by the best operators, and lead to disruptions in revenue if licensees or their affiliates later merge. The Board will undoubtedly exercise its discretion wisely to prevent monopolization.


The Board has properly interpreted Section 1330 to allow a slot machine licensee to possess ownership or financial interests of 33.3% or less in additional licensees. In addition, although the proposed regulation does not explicitly address this issue, we respectfully submit that Section 1330 is not implicated unless the applicant for a second license, or its affiliate, subsidiary, intermediary or holding company holds an ownership or financial interest in the first slot machine license of over 50%. The plain words of Section 1330 speak of the first licensee as a whole legal entity – a “slot machine licensee, its affiliate, intermediary, subsidiary or holding company” – and not fraction thereof. Had the General Assembly intended to trigger the prohibition when an entity held less than a majority interest in a slot machine licensee, it would have specified that anyone who has an ownership or financial interest in one license may not have an ownership or financial interest in excess of 33.3% in a second. *See Holland ex rel. Holland v. Marcy*, 817 A.2d 1082, 1091 (Pa. Super. 2002) (quoting Felix Frankfurter) (“As a matter of statutory interpretation, although one is admonished to listen attentively to what a statute says; one must also listen attentively to what it does not say.”) Again, the Board has ample discretion to ensure that this interpretation is not abused. *See* 4 Pa. C.S. § 1325.

Finally, we respectfully submit that the term “ownership or financial interest” is best interpreted to mean an interest in the nature of equity ownership, rather than contractual interests in the nature of management contracts, options to purchase ownership interests or loans. This is demonstrated by the fact that Sections 1328 and 1330 measure an ownership or financial interest as a percentage of the entity, a unit of measure that only has relevance to the ownership of securities or similar shares of ownership. *See, e.g.,* 1328(a)(1). This interpretation is supported by Section 1512(b) of the Act, which defines a “financial interest” as owning or holding securities. *See Housing Auth. of County of Chester v. Pennsylvania State Civil Serv. Comm’n*, 730 A.2d 935, 945-46 (“When the meaning of a word or phrase is clear when used in one section, it will be construed to mean the same thing in another section of the same statute.”); *Dynamic Sports Fitness Corp. v. Community YMCA of E. Del. County*, 768 A.2d 375, 381 (Pa. Cmwlth. 2001). This interpretation is also consistent with the common usage of the term “interest,” *see* 1 Pa. C.S. § 1903 (words should be construed according to their common and approved interest), which is defined as

The Pennsylvania Gaming Control Board
October 28, 2005
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a right, title or legal share in property, see Merriam Webster's Collegiate Dictionary (10th ed.); see also Black's Law Dictionary (8th ed.) (defining a "financial interest" as "[a]n interest involving money or its equivalent; esp. an interest in the nature of an investment").

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark A. Aronchick". The signature is fluid and cursive, with a large initial "M" and "A".

Mark A. Aronchick

MAA/kds

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DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE	<input type="text" value="10/27/2005"/>	ADDRESS 1	<input type="text"/>
SECTION # OR SUBJECT	<input type="text" value="441.18"/>	ADDRESS 2	<input type="text"/>
FIRST NAME	<input type="text"/>	CITY	<input type="text"/>
LAST NAME	<input type="text" value="Michael & Carroll, P.C."/>	STATE	<input type="text"/>
ORGANIZATION NAME	<input type="text" value="Pocono Manor Investors, L.P."/>	ZIP CODE	<input type="text"/>
EMAIL ADDRESS	<input type="text"/>	COUNTY	<input type="text"/>
		TELEPHONE	<input type="text"/>

COMMENTS

See Attached.

Comments may be submitted to the Board by U.S. Mail at the following address:

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
Attn: Public Comment



MICHAEL & CARROLL

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

REPLY TO: POINT PLEASANT OFFICE
ATLANTIC CITY OFFICE

October 27, 2005

VIA OVERNIGHT MAIL

Tad Decker, Chairman
Pennsylvania Gaming Control Board
303 Walnut Street
Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17101

Re: Comments to Proposed Regulations
Section 441.18

Dear Chairman Decker:

Please accept these comments to regulations proposed at Section 441.18. These comments are submitted on behalf of Pocono Manor Investors, L.P., an entity intending to apply for a Category 2 slot machine license.

It is respectfully submitted that the proposal to Section 441.18 be revised. The reasons for this position and a proposal for alternative language follows.

Section 441.18 addresses multiple ownership of slot machine licenses. It limits its coverage to situations in which a change of ownership has occurred. As we read the present wording of the regulation, it allows acquisition by any category of licensee of up to 33.3% of another licensee, regardless of category. It also allows acquisition by any category of licensee of up to 33.3% of any other person eligible to apply for a Category 1 license. We understand this to mean, in more colloquial terms, that any slot machine operator can acquire up to one-third of any other operator or up to one-third of any racetrack eligible to become an operator. We do not think that such a rule is in keeping with the language of the Pennsylvania Race Horse Development and Gaming Act (hereafter "Act"), nor is it an authorized or effective implementation of the purposes and policies of that Act.

MICHAEL & CARROLL

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Chairman Tad Decker

Page 2

As a matter of law, any analysis begins with the acknowledged concept that no agency can promulgate a regulation that contradicts the statutory authority pursuant to which the regulation emanates. See, e.g., Lehigh Valley Cooperative Farmers, Inc. v. United States, 370 U.S. 76 (1962). Here, the statutory authority comes from the Act. In particular, it stems from the legislative licensing scheme established in the Act at Sections 1301, 1302, 1304, and 1305. These sections, when read in *pari materia*, clearly create a structure within which no licenses may be held by the same party in more than one Category. The specific wording of those Sections dictates such an interpretation.

First of all, Section 1301 authorizes the three categories of licensure. In doing so, in its first sentence, it says, “There shall be three **distinct** classifications of slot machine licenses, designated by category, **each** permitting a licensed racing entity or person to apply for **a** qualifying license category and, upon issuance by the board in its discretion, to place and operate slot machines at **a** licensed facility.” The import of this language is clear. It intends to separate the licenses into distinguishable and discrete types, each unconnected. It similarly specifies that persons may hold licenses in the singular, not the plural, thus not contemplating licensure in more than one category.

But, as stated before, if the language of Section 1301 is not enough to determine the intent of the Legislature in this regard, we have Sections 1302, 1304, and 1305 to finish the matter.

Section 1302 establishes the eligibility for Category 1 licenses. It does so by limiting eligibility to a very carefully defined class – those persons who already hold licenses to conduct thoroughbred or harness race meetings at certain similarly defined locations. By doing so, the Legislature has unalterably prevented any person who does not fit within those closely cropped criteria from holding that Category of license. This is in keeping with the format established in Section 1301 that each Category have its own criteria and its own licensees.

This becomes even clearer as we examine Sections 1304 and 1305. Those Sections establish the eligibility for Categories 2 and 3 licenses. Section 1304 says that a person may be eligible to apply for a Category 2 license only if “the applicant, its affiliate, intermediary, subsidiary or holding company **is not otherwise eligible to apply for a Category 1 license . . .**” (emphasis added). In addition, Section 1305, in establishing who may apply for a Category 3 license, limits that to persons, or their affiliates, who have “**not applied for or been approved or issued a Category 1 or 2 license . . .**” (emphasis added).

It would have been difficult for the Legislature to have been more transparent. No person, by law, may obtain a Category 2 license if it may also obtain a Category 1 license and no person, by law, may obtain a Category 3 license if it also may obtain either a Category 1 or a Category 2 license. That covers it. The Categories are separate and

MICHAEL & CARROLL

A PROFESSIONAL CORPORATION

Chairman Tad Decker
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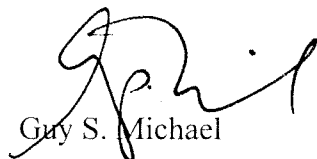
distinct by statute. Any regulation that would render them otherwise would be *ultra vires* and unenforceable.

Finally, we do not see the limitation of this proposal to only changes of ownership as being a meaningful one. It does nothing to mitigate the problems inherent in the concept of the proposal in the first place. We assume, for purposes of these comments, that the silence of this rule with regard to whether or not an operator in one category can own one-third of another casino in another category prior to opening bans that type of ownership. Regardless, even if this is the case, the rule in its present form would allow cross-ownership the day after opening. The limitation to change in ownership, therefore, merely delays, by whatever small measure, the deleterious effects of the essence of the proposal. It does not eliminate them.

For all of these reasons, we respectfully request that the proposed regulation be withdrawn. In its place, we offer the attached alternative. This alternative makes clear that licensure by any party in more than one Category is prohibited. In doing so, we believe that it better represents the language of the Act and the intent of the Legislature.

Thank you.

Sincerely,



Guy S. Michael



Robert J. Carroll

:dv

Attachment

c: Greg Matzel
Morris Bailey
Jim Cahill

441.18. [Change in ownership or control of slot machine licensee and m]Multiple slot machine license prohibition.

(a) [Pursuant to a change in ownership or control of a slot machine licensee under section 1328 of the act and i]In accordance with sections 1301 (relating to authorized slot machine licenses), 1302 (relating to category 1 slot machine licenses), 1304 (relating to category 2 slot machine licenses), 1305 (relating to category 3 slot machine licenses) and 1330 of the act (relating to multiple slot machine license prohibition), a slot machine licensee, including its affiliates, intermediaries, subsidiaries and holding companies, is prohibited from possessing an ownership or financial interest in a slot machine licensee in more than one category of license [any other slot machine licensee] or in any other person eligible to apply for a Category 1 slot machine license or its affiliates, intermediaries, subsidiaries or holding companies. [that exceeds 33.3%.]

(b) Nothing in subsection (a) shall be construed to prevent a slot machine licensee from possessing ownership or financial interests of 33.3% or less, in multiple slot machine licensees of the same category or in persons eligible to apply for a Category 1 slot machine license or its affiliate, intermediary, subsidiary or holding company.

(c) If a slot machine licensee or its affiliates, intermediaries, subsidiaries or holding companies has an ownership or financial interest in another slot machine licensee that is in violation of subsection (a), the licensee will be required to divest that interest which is in excess of the amount permitted herein [33.3% in compliance with section 1330 of the act (relating to multiple slot machine license prohibition)].

RECEIVED

OCT 31 2005

OF COUNSEL
ELLIOT UNTERBERGER
JOHN J. TAYLORHENRY W. MAXMIN
(1976-1990)

LAW OFFICES

PELINO & LENTZ

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October 26, 2005

†NJ MANAGING ATTORNEY

*ALSO MEMBER NJ BAR

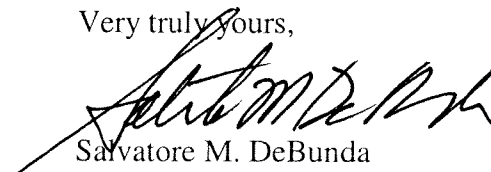
The Pennsylvania Gaming Control Board
Office of Communications
P. O. Box 69060
Harrisburg, PA 17106-9060
ATTN: Public Comment

Re: Comments to the Board's Draft Temporary Administrative Regulations

We are counsel to the Pennsylvania Thoroughbred Horsemen's Association, a Pennsylvania non-profit corporation ("PTHA"), an organization which consists of owners and trainers who race at Philadelphia Park located on On behalf of our client, we enclose its proposed comments to section 441 of the Board's proposed draft temporary administrative regulations.

Feel free to contact me with any questions or concerns regarding the comments we have provided. Thank you for your time and consideration.

Very truly yours,



Salvatore M. DeBunda

/dts

Enclosures

cc: Lawrence R. Riviello, President, PTHA
Michael P. Ballezzi, Executive Director, PTHA

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

**In re: Promulgation of Temporary Administrative
Regulations Pertaining to 58 PA. Code Chs 441 and 463**

COMMENTS OF
PENNSYLVANIA THOROUGHBRED HORSEMEN'S ASSOCIATION

On this 26th day of October, 2005, by and through its undersigned counsel, the Pennsylvania Thoroughbred Horsemen's Association, a Pennsylvania non-profit corporation ("PTHA"), located at .

respectfully submits these comments to the Board's temporary regulations regarding 58 PA. Code Chs 441 and 463. In so doing, the PTHA seeks to share with this Board the perspective of Pennsylvania horse owners and trainers who are significantly effected by the Pennsylvania Race Horse Development and Gaming Act cited as Title 4 of the Pennsylvania Consolidated Statutes, Part II (relating to gaming), enacted by the act of July 5, 2004 (P. L. 572, No. 71) hereinafter referred to as the "Gaming Act."

As counsel to the PTHA, we have been asked to review the Board's proposed draft temporary regulations (hereinafter referred to as the "Gaming Regulations") and provide comments as it concerns the PTHA and other owners and trainers of horses throughout the Commonwealth of Pennsylvania. Our comments address the rules governing Category 1 slot machine licenses, and our concerns regarding the proposed cross ownership of multiple Category 1, 2 and 3 slot machine licenses and how such ownership could potentially minimize the gross terminal revenue of Category 1 slot machine licensees. A reduction in such gross terminal revenue would decrease the horsemen's share of the distribution to the Pennsylvania Race Horse Development Fund

that benefits members of the PTHA and other owners and trainers of horses throughout the Commonwealth of Pennsylvania.

Introduction.

As we have stated in our earlier comments relating to the Gaming Act, the PTHA is an organization consisting of owners and trainers of thoroughbred horses that race, train and board their horses at [REDACTED]. The PTHA represents approximately 4,000 owners and trainers of thoroughbred horses who race their horses in the Commonwealth of Pennsylvania. The owners purchase the horses and assign the horses to trainers stationed at [REDACTED]. These owners pay to train, feed, medicate, transport and pay race entrance fees to compete throughout the Commonwealth of Pennsylvania. The trainers hire grooms, exercise riders and hot walkers, coordinate medical treatment and design training programs in compliance with the laws of the Commonwealth of Pennsylvania.

Racetracks with slot machines in the State of Delaware and the Commonwealth of West Virginia have gained an enormous advantage over the tracks in Pennsylvania. Racetracks with slots offer higher purses, generate millions of dollars to modernize facilities and can afford costly advertising and promotions. As a result, racing quality have dramatically improved and attendance has increased. Racetracks that include slot machines have revitalized the overall horse racing industry in both Delaware and West Virginia, and have had a positive impact on horse breeding and horse ownership. Such revitalization has sparked a tremendous new demand for agricultural products and services, equipment, farms, homes and thousands of new jobs. The intense competition from these neighboring racing industries has accelerated the decline of Pennsylvania's racing industry. For Pennsylvania's horse racing industry, the debate over slot machines is not about "hitting the jackpot," but about survival. The reality is, if the horse racing industry in Pennsylvania does not include revenue generated by slot machines, it is only a matter of time before the racing industry in Pennsylvania falls apart.

An economic study performed by the Pennsylvania State University has determined that adding slot machines to the Commonwealth's racetracks would result in the creation of over 17,000 new jobs, \$1 billion in income, \$2.5 billion in additional economic activity and hundreds of millions of dollars in tax revenue for state programs. The addition of slot machines could bolster state programs for breeding and save over 35,000 jobs that currently rely on the Pennsylvania's horse racing industry.

Comment – Slot Machine Licenses.

The PTHA proposes that section 441.18 (Change in Ownership or Control of Slot Machine Licensee and Multiple Slot Machine License Prohibition) of the Gaming Regulations be amended in its entirety to read as follows (all changes to this section have been blacklined):

§ 441.18. Change in Ownership or Control of Slot Machine Licensee and Multiple Slot Machine License Prohibition.

(a) Pursuant to a change in ownership or control of a slot machine licensee under section 1328 of the act and in accordance with section 1330 of the act (relating to multiple slot machine license prohibition), a slot machine licensee in any Category under the Gaming Act, including its affiliates, intermediaries, subsidiaries and holding companies, is prohibited from possessing an ownership or financial interest that exceeds 33.3% in more than one other slot machine licensee, or in any other person eligible to apply for another slot machine license in the same Category under the Gaming Act, or its affiliates, intermediaries, subsidiaries or holding companies.

(b) Nothing in subsection (a) shall be construed to prevent a slot machine licensee within one Category from possessing ownership or financial interests of 33.3% or less, of one (1) additional slot machine licensee within the same Category of licensure, or in persons eligible to apply for a slot machine license within the same Category of licensure under the Gaming Act, or its affiliate, intermediary, subsidiary or holding company.

(c) Provided; however, under no circumstances shall a slot machine licensee, in any Category under the Gaming Act, including its affiliates, intermediaries, subsidiaries and holding companies, possess an ownership or financial interest in any slot machine licensee in any other Category under the Gaming Act.

The PTHA suggests that Section 441.18(a)(b) of the Gaming Regulations be changed to clearly reflect the intent of the Gaming Act and to clarify the prohibitions and ownership limitations of slot machine licensees. Section 1330 prohibits a slot machine licensee, its affiliate, intermediary, subsidiary or holding company from possessing an ownership or financial interest that is more than 33.3% of another slot machine licensee or person eligible to apply for a Category 1 license, its affiliate, intermediary, subsidiary or holding company. Although the ownership limitations of Section 1330 specifically refer to Category 1, the PTHA suggests that such limitations extend to Category 2 and 3 slot machine licensee ownership.

The legislative intent of the Gaming Act precludes the cross ownership of Category 1, 2 and 3 slot machine licenses. Pursuant to Section 1304 of the Gaming Act, a person may be eligible to apply for a Category 2 license if the applicant, its affiliate . . . is not otherwise eligible to apply for a Category 1 license. Section 1305 deems a person eligible to apply for a Category 3 license if the applicant, its affiliate . . . has not applied for or been approved or issued a Category 1 or 2 license. Clearly, the intent of the Gaming Act is to preclude ownership of multiple categories of slot machine licenses and to encourage a healthy competitive environment in the gaming industry in Pennsylvania, rather than establishing regulations that allow for the creation of a monopoly by a few Licensed Entities.

Because the PTHA and other owners and trainers of horses throughout the Commonwealth of Pennsylvania receive distributions solely from the revenue generated at Category 1 Licensed Facilities and **not** from revenue generated by slot machine revenue at Category 2 and 3 Licensed Facilities, cross ownership of Category 1, 2 and 3

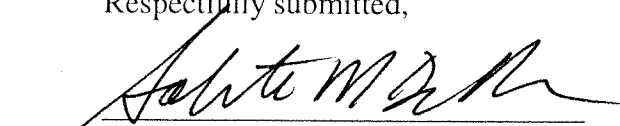
licensees could detrimentally affect the sum total of distributions to the PTHA members. For example, if a Licensed Entity operates or holds a 33.3% interest in a Category 1 and Category 2 Licensed Facility, the Licensed Entity, may at its sole discretion, market, advertise or induce its patrons, in particular its highrollers to patronize its Category 2 Licensed Facility and not its Category 1 Licensed Facility. As a result, the total of the Licensed Gaming Entity's gross terminal revenue at both locations generated for that particular day will remain the same; however, the total gross terminal revenue generated by the operating Category 1 licensee may be severely diminished. As a result, distributions to the PTHA members and other owners and trainers of horses throughout the Commonwealth of Pennsylvania could be severely harmed and the intent of the legislation to provide a portion of the revenue receipts to organizations like the PTHA and other owners and trainers of horses throughout the Commonwealth of Pennsylvania will have been lost.

Conclusion.

As the Board makes major steps toward licensing the gaming sites throughout the Commonwealth of Pennsylvania, the PTHA would like to emphasize that while the primary objective of the Gaming Act is to protect the public through the regulation and policing of all activities . . . the secondary purpose of the Gaming Act is provide for the authorization to install and operate slot machines to enhance live horse racing, breeding programs, entertainment and employment in the Commonwealth. *See* 4 Pa. C.S.A. 1102(1)-(2). A further intended objective of the Gaming Act is the authorization of limited gaming to positively assist the Commonwealth's horse racing industry, support programs intended to foster and promote horse breeding and improve the working conditions of personnel who work and reside in and around the stable and backside areas of racetracks. *See* 4 Pa.C.S.A. 1102(4). The PTHA objectives as an association mirror the intention of the Gaming Act, to assist the live horse racing industry and assure that live racing is preserved throughout the Commonwealth of Pennsylvania.

WHEREFORE, for the foregoing reasons, the Pennsylvania Thoroughbred Horsemen's Association respectfully requests that this Honorable Board amend its proposed draft temporary administrative regulations in such a manner that is consistent with these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Salvatore M. DeBunda", written over a horizontal line.

Salvatore M. DeBunda, Esquire
Dionne T. Savage, Esquire
Pelino & Lentz, P.C.

Counsel to the Pennsylvania Thoroughbred
Horsemen's Association