



Senate of Pennsylvania

July 18, 2008

Via Hand Delivery

The Honorable Mary D. Colins, Chairperson
Pennsylvania Gaming Control Board
5th Floor, Strawberry Square
Harrisburg, Pennsylvania 17101

**Re: Joint Application of PITG Gaming, LLC and Holdings Acquisition Co, LP
for Approval of the Reorganization, Change of Control and Recapitalization
of PITG Gaming LLC and other relief, PGCB Dkt. No. 42028.**

Dear Chairperson Colins:

Independence and impartiality are the touchstone of any adjudicatory proceeding – in particular the consideration by the members of the Pennsylvania Gaming Control Board of the merits of the above captioned matter (hereinafter “Joint Petition”). Unfortunately, recent reports appear to suggest that the Board’s consideration of the Joint Petition will be limited to a suitability review and will not address the broader public policy concerns we have raised in our formal comments, such as the revocation of the PITG license. Accordingly, we ask for your assurance that the Board will take all actions necessary to preserve its statutory responsibility to act in an objective, impartial and independent manner.

The concerns we raise in this letter stem from correspondence delivered to members of the General Assembly on Wednesday from the Board’s Acting Executive Director, as well as an article which appeared in yesterday’s *Pittsburgh Post-Gazette*. The *Post-Gazette* article reported that principals associated with the Joint Petition participated in a conference call with a member of the Board, House Majority Appropriations Committee Chairman Dwight Evans and Governor Rendell seeking “guidance, input and assurances” that the new financing deal would be approved by the Board.¹ The participation in any discussions by a member of the Gaming Board is explicitly prohibited under the 2006 amendments to the Gaming Act. In particular, Section 1202.1 of the Act imposes a Code of Conduct governing each member of the Board, which includes an admonition that no member of the Board shall engage in any ex parte communication with any person.² The Act is clear, defining an ex parte communication as:

¹ Toland, “Majestic Star fizzles, goes dim”, *Pittsburgh Post-Gazette* (July 17, 2008).

² 4 Pa.C.S.A. § 12021.(c)(1).

“An off-the-record communication by a member or employee of the board regarding the merits of or any fact in issue relating to a pending matter before the board or which may be reasonable be expected to come before the board in a contested on-the-record proceeding.”

The Joint Petition was formally filed with this Board last Wednesday (July 9, 2008). The alleged discussions at issue took place this past weekend. Significantly, any doubt concerning the application of this provision of the statutory code of conduct to this proceeding was conclusively removed by the Board’s Acting Executive Director who explicitly stated in a letter to members of the General Assembly:

“It would be inappropriate for the Board to engage in ex parte discussions about the details of a pending matter upon which it will exercise its quasi-judicial responsibilities.”³

If accurate, the involvement of the House Majority Appropriations Committee Chairman, who has direct oversight over the Board budget, in discussions with a member of the Board on behalf of applicants for a gaming license raises troubling ethical questions concerning the Board’s adjudicatory process, the conduct of its members and the inherent fairness of any resulting determination.

The Act’s Code of Conduct also prohibits any Board member from engaging in discussions with any applicant or licensed person unless the discussion “occurs on the business premises of the board and is recorded” in a publically available log.⁴ It is worth noting that both of these statutory provisions mirror New Jersey law and were steps deemed by our General Assembly as necessary to ensure public confidence in the objectivity and impartiality of the Board’s decisions and conduct. In other words, these provisions were specifically adopted to prevent the very conduct reported in the *Post-Gazette* article.

Additionally troublesome was the correspondence from the Board’s Acting Executive Director who concluded that the Joint Petition was analogous to the prior acquisition of Harrahs’ Gaming by Apollo Management, and the terminated acquisition of PennNational Gaming by Fortress Investments. Not only does such an analogy belie the fact that the Joint Petition is dramatically different from either of the cited corporate acquisitions, but it creates the impression that the Board will not consider our formal request that the license issued to PITG be revoked as financially non-viable. The letter appears to suggest that the Board will simply engage in a suitability review of the Joint Petition without addressing these broader public policy concerns.

As conceded by the Joint Petitioners, this is not simply a corporate acquisition, rather it is a bailout of a financially failed development plan. Unlike Harrahs, which was an outright multi-state purchase of an entire corporation, there was never any question concerning Harrahs’ financial health or ability to successfully construct, operate and manage a casino. By comparison, the PITG casino license is no longer financially viable. A gaming license is a conditional privilege, based upon the continued qualification of each licensee – including its financial viability. PITG is financially distressed, considered materially in default of its existing

³ Letter of Frank T. Donaghue, Acting Executive Director, page 2 (July 16, 2008).


⁴ 4 Pa.C.S.A. § 1202.1(c)(7).

loan obligations and unable to complete the casino development project as originally approved by this Board.

Accordingly, the proper response of this Board is to revoke the license issued to PITG, not simply engage in a suitability review of the new investors. Tantamount to a completely new license, the Joint Petition is a clear attempt to avoid any competitive application process for the Pittsburgh slots license and to save the investments of PITG. This last minute bait-and-switch is unacceptable. It should not be the focus of this Board to rescue a distressed casino investor.

The financial failure of PITG and the future of casino development in Pittsburgh is a matter of significant public concern and attention. As such, we have chosen to formally file public comments and made written requests for the disclosure of the Joint Petition's transactional documents. Our actions are open, transparent and consistent with the Board's administrative regulations. We seek your assurance that our concerns and requests will be considered by this Board in an objective, impartial and independent manner.

Sincerely,


JANE CLARE ORIE
Majority Whip
40th Senatorial District


JIM FERLO
State Senator
38TH Senatorial District

cc: All members of the Pennsylvania Gaming Control Board
All counsel of record