

House Gaming Oversight Committee
October 5, 2011

Testimony of William H. Ryan, Jr., Chairman
Pennsylvania Gaming Control Board

Good morning Chairman Schroder, Chairman Youngblood and members of the Committee. My name is Bill Ryan, and I was recently appointed by Governor Corbett to serve as Chairman of the Pennsylvania Gaming Control Board. Also joining me today are Commissioner Gary Sojka and the Board's Executive Director, Kevin O'Toole, who are seated in the audience today.

My experience prior to being appointed to the Board has been principally in law enforcement. I was twice elected the District Attorney of Delaware County and I spent fourteen years in the Office of the Attorney General of Pennsylvania serving as Director of the Criminal Law Division, the First Deputy Attorney General and Acting Attorney General. In all, I have over thirty-four years of law enforcement experience, which I like to think will serve me well as I begin this new challenge.

As you are aware, the primary objective of the Pennsylvania Race Horse Development and Gaming Act, to which all other objectives and purposes are secondary, is to protect the public through the regulation and policing of all activities involving gaming. It is based upon this primary concern that any legislative amendment to the Gaming Act should be analyzed.

I want to preface my remarks by making it clear that my statements here today reflect my own point of view, and may not reflect the opinions of other members of the Board. Having said that, I would like to offer comments on three bills from the legislative package, and then answer any questions that you may have.

HOUSE BILL 2002

House Bill 2002 would require the Auditor General to conduct annual performance audits to determine compliance with the Gaming Act and report findings and recommendations to the General Assembly.

I have no objection in principle to this proposal. If such an audit can be completed quickly, an annual audit makes sense. However, I am informed that the Auditor General has already performed two audits to

date both of which took in excess of one year. Obviously, if that amount of time is the rule in a comprehensive and thorough audit, an annual audit may present practical problems. The Committee may wish to seek the opinion of the Auditor General as to how often an audit should be performed.

HOUSE BILL 2006

House Bill 2006 would require that every background investigation report include an appendix which provides, “all information collected by the bureau that relates to the application.” This provision is also among the recommendations of the Thirty-First Statewide Investigating Grand Jury.

While I understand the frustration that the Grand Jury presumably felt, I must also admit that this provision concerns me. Background investigations often result in the production of information that is little more than rumor or innuendo. Requiring that such information be included in a report could result in severe harm and prejudice to an individual. Only information that can be substantiated by a skilled and experienced investigator should be included in a report.

The issue that this provision attempts to deal with -- making sure that background investigations are done completely and accurately -- demonstrates to me the importance of moving the Bureau of Investigations and Enforcement ("BIE") to the Office of Attorney General.

My reasons for supporting this are as follows. The Board is a quasi-judicial body. BIE is an investigative unit. The law, the regulations and common sense all dictate that there should be a "wall of separation" between the Board and BIE. But this structure is harmful to good management and good government. The statutory mandate that BIE is a "distinct entity" and "independent of the Board" means that BIE is not truly accountable to the Board. If it is not accountable to the Board, it is accountable to no one. Placing BIE in the Office of Attorney General would correct this anomaly and ensure that, in the preparation and completion of background reports as well as in the performance of all the other responsibilities of BIE, there is full accountability to the people of Pennsylvania.

HOUSE BILL 2008

House Bill 2008 would prohibit the Board from meeting in executive session to conduct quasi-judicial deliberations involving slot machine license applications except for the purpose of considering confidential information.

Again, this provision is among the Grand Jury recommendations and, again, I can understand the Grand Jury's frustration. However, the Pennsylvania Supreme Court has long recognized the importance of permitting quasi-judicial entities, which includes the Board, to conduct deliberations in executive session. In the case of *Kennedy v Upper Milford Township Zoning Hearing Board* (834 A.2d 1104 (2003)) the Court stated that where an agency is characterized predominately by judicial functions (like the Board) it is particularly appropriate for the agency to deliberate privately. In reaching this result, the Court stated that quasi-judicial boards "...are expected and required to resist intense pressure to which they are subjected from all sides and to decide the issues on their legal merits without regard for the identity or influence of the parties....The deliberation of matters so charged with emotion and

political signification must be cloaked with the protection of privacy if it is to assist the board in carrying out its weighty decisional responsibilities.”

As the new Chairman, I can assure you that I understand the importance of transparency, and you have my commitment that I will do everything in my power to ensure that the Board adheres to the Sunshine Act and the Right-to-Know Law. However, I would suggest that prohibiting quasi-judicial deliberations in executive sessions may have the unintended consequence of limiting the frank and honest discussion necessary for the Board to thoroughly vet an application, and less deliberation could ultimately lead to less-informed decisions by the Board.

In closing, I support the remaining eleven legislative proposals and would note that prior to my appointment, the Board implemented a number of the Grand Jury’s recommendations.

Finally, you have my assurance that the Board will continue to pursue the strict regulation of gaming as mandated under the Gaming Act.

I would be pleased to answer any questions that you may have.