

Opening Statement: Lt. Col. Ralph M. Periandi, PSP Retired

Senate Community, Economic & Recreational Development
Committee, October 22, 2007.

Madam Chairwoman, I appear before this committee today with the sincere hope that my testimony will help to improve the overall process of administrating gaming in Pennsylvania and move toward ensuring the PGCB is privy to all information relevant to the very important determinations and decisions they are making.

I testify as a concerned citizen of this great Commonwealth and as a retired 32 year veteran of the PSP. My most recent assignment was as Deputy Commissioner of Operations from January 2003 until March of this year which included the command of PSP gaming enforcement and its organizational structure within the PSP from its inception. Prior to that position I served for 7 years as the Director of the PSP Bureau of Criminal Investigation which

included responsibility for security and policy compliance of the Department's intelligence and protected information files.

I believe my background and experience will provide the expertise to help this committee better understand the issues before it, the overall gaming background investigation process, as well as the legal requirements related to protected information collection, retention, and dissemination under 18 PA. C.S., Ch. 91 the Criminal History Records Information Act (CHRIA) and 28 CFR 23 at the national level.

The Pennsylvania Gaming Act, Act 71 of 2004 authorizes either the PSP or the PGCB Bureau of Investigations and Enforcement (BIE) to conduct gaming related background investigations. The Act further tasked the PGCB with the responsibility to select whether PSP or BIE would be responsible for this task. The PGCB selected its BIE to perform background investigations while having the PSP forward to BIE applicant database checks (criminal history

rap sheets, wanted persons information, and credit reports) completed by clerical employees in the PSP gaming enforcement office. Because BIE is not authorized to be the recipient of protected information defined as investigative, intelligence, and treatment information under state or federal law, background investigations conducted by BIE are incomplete. This results in the PGCB not having relevant information regarding licensing decisions.

The above dilemma was quickly identified by Mr. Fredric E. Gushin, managing director of Spectrum Gaming Group. He is a former Assistant Director with the NJOAG Division of Gaming Enforcement. Spectrum was part of the original group of consultants employed by the Dept. of Revenue to advise the PGCB on policy and process, as well as to prepare the “Blueprint for Slot Gaming Regulation in Pennsylvania.” Gushin’s strong recommendation was to have the PSP selected to conduct background investigations due to the inability of BIE to obtain

protected information under CHRIA and 28 CFR 23. His conclusions and recommendations were not included in the final consultant's report submitted at the end of 2004.

The Pa. Legislature further complicated this issue by designating BIE as a Criminal Justice Agency under 18 PA. C.S., Ch. 91 by amendment of the Gaming Act in November 2006. This designation is problematic for at least three reasons:

First, 18 PA C.S., Ch. 91 specifically authorizes the Pa. Attorney General to designate agencies as CJA under Pa. law. The Pa. OAG has a specific process to ensure an agency qualifies for CJA designation and has followed this process for many years.

Second, BIE does not perform actual criminal justice duties. It has no criminal enforcement or arrest powers and is limited to the initiation of administrative proceedings under the Gaming Act. Therefore, BIE does not meet the criteria previously established by the Pa. OAG.

Third, any authorization under Pa. law to share protected information with BIE is preempted by Federal Statute 28 CFR 23. Furthermore, in correspondence dated February 16, 2006 directed to the Executive Director of the Pa. House Judiciary Committee the U.S. Dept. of Justice, FBI Office of General Counsel has opined that (quotes are taken directly from the correspondence) protected information may be disseminated to, “criminal justice agencies for criminal justice purposes.” Federal law defines a CJA as, “a governmental agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice.” Administration of criminal justice is defined as, “performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.” In this correspondence, the U.S. DOJ concludes that, “it appears that the primary function of BIE (the Board) is

licensing and employment and therefore BIE does not meet the definition of a CJA performing the administration of criminal justice.” Further, “amending 18 Pa. C.S. Section 9102 to designate the Board or the BIE as criminal justice agencies within the state of Pennsylvania will not change the FBI’s determination that the Board lacks authority to access NCIC III, because that determination is based on the non-criminal justice function of the Board.”

In my view, the Pa. Legislature has the option of two permanent solutions to ensure comprehensive background investigations are completed for the PGCB. The first, the Occam’s razor approach, is to amend the Gaming Act by repealing the section authorizing BIE to perform background investigations and mandate they be conducted by the PSP. The second is to follow the New Jersey Model by again amending the Gaming Act and transferring BIE from the PGCB to the Pa. OAG. New Jersey’s configuration of State Police and Office of Attorney General Division of Gaming

Enforcement duties and responsibilities designed to assist the NJGCB has proven to be one of the best practices nationwide over the last 30 years.

If requested, I will also further elaborate during questioning on the intention and meaning of the statements included in the memo prepared by Ms. Nora Winkelman, Executive Deputy General Counsel dated June 12, 2006, commonly referred to as the “written agreement” between the PGCB BIE and the PSP.

Ultimately, my sincere hope is that my testimony is not in vain and will assist this committee in amending our Gaming Act to ensure that Pennsylvania’s process meets the highest levels of integrity, and exceeds, rather than falling short of current industry standards.

Finally, I want to thank the Senate Community, Economic & Recreational Development Committee for providing me this opportunity to testify.