

February 17, 2006

**Via Hand Delivery**

The Honorable Thomas A. Decker, Chairman  
Pennsylvania Gaming Control Board  
5<sup>th</sup> Floor, Verizon Tower  
Strawberry Square  
Harrisburg, Pennsylvania 17101

**Re: Proposed regulatory definition of the term “stock”, 58 Pa. Code § 401.4 –  
Public Comments.**

Dear Chairman Decker:

The purpose of this letter is to comment on the Pennsylvania Gaming Control Board’s proposed regulatory definition of the term “stock” as it appears in the draft of 58 Pa.Code § 401.4. These comments are submitted in response to the Board’s Order of January 26, 2006, and suggest a less narrowly construed definition of the term “stock” as it is used in section 1512 of the Pennsylvania Race Horse Development and Gaming Act.

**Introduction.**

The Board’s proposed definition of “stock” relates to the type of financial interest, in a licensed gaming entity, that may be held by an executive-level state employee, public official or party officer pursuant to the Act.<sup>1</sup> The gaming Act provides that an executive-level state employee, public official or a party office may be permitted to hold “stock” of a license gaming entity in a blind trust over which he does not possess any control or receive income. *Id.* In its development of administrative regulations intending to implement the provisions of the Act, the Board has narrowly defined “stock” to only include:

“. . . equity security that is listed, or authorized for listing, on the New York Stock Exchange, or the American Stock Exchange, or listed on the National Market System of the NASDAQ Stock Market, or any equity security that is exempt from state regulation pursuant to section 18(b)(1)(B) of the Securities Act

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<sup>1</sup> 4 Pa.C.S.A. § 1512(b).

of 1933 (15 U.S.C.A. § 77r(b)(1)(B)), as amended.”<sup>2</sup>

The effect of this definition is to limit the term “stock” to only publically traded equity securities – all other commonly understood forms of the term “stock” are therefor excluded from the Board’s narrowly constructed definition. The proposed interpretation of the term “stock” is inconsistent with the Act and the Pennsylvania Rules of Statutory Construction.

### Discussion.

Section 1514(b) of the Act defines the type of “financial interest” that public officials are prohibited from possessing. However, the definition excludes two types of financial interests that public officials are not excluded from possessing – (1) securities in a gaming entity that do exceed 1% of the fair market value of the entity; and, (2) “stock” that is held in a blind trust over which the public official does not exercise managerial control or receive income during the term of office and one year thereafter. Particularly significant is the fact that the term “securities” is not used to describe the type of financial interest that may be held in a blind trust – rather, the General Assembly intentionally used the term “stock,” instead of “securities,” thereby suggesting the inclusion of other forms of financial interests that may be held in a blind trust.

The Pennsylvania Rules of Statutory Construction, as set forth in the Pennsylvania Statutory Construction Act guide the interpretation of the state statutes.<sup>3</sup> The primary principle of the Rules is to give meaning and effect to the intention of the legislature.<sup>4</sup> In particular, the Rules of Statutory Construction provide that words and phrases, such as the term “stock,” are to be construed according to their common and approved usage.<sup>5</sup>

“Stock” is commonly understood to include “the goods and wares of a merchant or tradesman”, the “capital of a merchant,” “money, credits,” and includes “not only capital stock of a corporation but all corporate wealth and resources, subject to all corporate liabilities and obligations.”<sup>6</sup> “Stock”, as commonly used, is not limited to publically traded securities of a corporation – rather, it includes all forms of corporate wealth.<sup>7</sup>

<sup>2</sup> See, Board Order of January 26, 2006.

<sup>3</sup> Act of December 6, 1972, PL 1339, No. 290, *as amended*, 1 Pa.C.S.A. § 1901, *et seq.*

<sup>4</sup> See, 1 Pa.C.S.A. § 1921(a); *also*, 71 P.S. § 745.5b (Pennsylvania Regulatory Review Act provides that in crafting administrative regulations, agencies are charged “first and foremost” with promulgating regulations that “conform to the intention of the General Assembly in the enactment of the statute upon which the regulation is based.”); *Mt. Laurel Racing Ass’n. v. Zoning Hearing Board, Municipality of Monroeville*, 73 Pa. Cmwlth. 531, 548 A.2d 1043 (1983) (“legislative intent” is the polestar of statutory construction).

<sup>5</sup> 1 Pa.C.S.A. § 1903(a); *P.R. v. Pennsylvania Department of Public Welfare*, 759 A.2d 434 (Pa. Cmwlth. 2000) (court may resort to dictionary definition of terms not defined by legislature).

<sup>6</sup> (Emphasis added) *Black’s Law Dictionary*, 1586 (4<sup>th</sup> Edition, 1957).

<sup>7</sup> See, *Appeal of Lehigh Ave. Ry. Co.*, 129 Pa. 405, 414, 18 A.498, 500 (1889) (the Pennsylvania Supreme Court construed the meaning of the term “stock” within the context of a

Additionally, even if the term “stock” were to be narrowly construed to include only equity shares of a corporation’s worth, it does not follow that it must only include securities that are commonly traded on exchanges.<sup>8</sup> In fact, the Official Comment to section 8-102 of the Uniform Commercial Code, of which the Pennsylvania Commercial Code is based, specifically includes stock of a closely held corporation even if it is not commonly traded on a securities exchange market – such stock is still recognized as an accepted medium of investment.<sup>9</sup>

When construing a statute, words having a well-settled legal meaning must be given such meaning unless there is a clear expression of legislative intent to the contrary.<sup>10</sup> It is noteworthy that the legislature did not use the more restrictive term “securities” in defining the asset that could be included in a blind trust. To the contrary, the legislature used the term “stock” – which would include all forms of corporate wealth, not simply those forms that may happen to be regularly traded on a securities exchange.

It is also worthwhile noting that the use of blind trusts to permit passive ownership interests in businesses that may otherwise present conflicts to public officials is not unique to the gaming Act. In fact, the use of the blind trust in the gaming Act was modeled from a similar provision in the Pennsylvania Utility Code.<sup>11</sup> The provision of the Public Utility Code establishing the membership of the Public Utility Commission explicitly permits members of the Commission to place into blind trust securities of any utility company during the time they are members of the Commission. While it is not suggested that members of the Gaming Board possess a similar statutory right, the legislature did include this provision in the gaming Act as it applies to all other public officials.

Accordingly, it is inconsistent with the ordinary meaning of the term “stock” and the expressed legislative intent of the Act, to narrowly define by administrative regulation “stock” to only include securities that are commonly traded on public exchanges. These comments are submitted with the sincere intention of providing guidance and assistance to the Board as it implements the provisions of the Act. Please do not hesitate to contact me if I may provide any additional information on this matter.

Sincerely,

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corporation’s act of incorporation, to include “the fund or property belonging to a firm or corporation, and used to carry out its business”).

<sup>8</sup> See, *Katz v. Abrams*, 549 F. Supp. 668, 671 (Pa. E.D. 1982) (federal district court determined that “stock” of a corporation is not limited to publically exchanged securities, but includes certified and uncertified securities such as “stock” of closely-held corporations even if not traded on securities exchanges).

<sup>9</sup> *Id.*

<sup>10</sup> *Stanton v. Lackawanna Energy, Ltd.*, 820 A.2d 1256 (Pa. Super. 2003).

<sup>11</sup> See, 66 Pa.C.S.A. § 301(b).

**Christopher B. Craig**  
Counsel

cc: All members of the Board  
Anne LaCour Neeb, Executive Director