

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

* * * * *

PUBLIC HEARING

BEFORE: MARY DIGIACOMO COLINS, CHAIRMAN
Raymond S. Angeli (Via Telephone),
Jeffrey W. Coy, James B. Ginty,
Kenneth T. McCabe, Sanford Rivers,
and Gary A. Sojka, Members
Keith Welks, Ex-officio Designee

HEARING: Wednesday, January 21, 2009
10:30 a.m.

LOCATION: North Office Building
Commonwealth and North Street
Hearing Room One
400 North Street, West
Harrisburg, PA 17105

WITNESSES: Robert Soper, Nan Davenport,

Reporter: Cynthia Piro-Simpson

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ALAN C. KOHLER, ESQUIRE
Wolf, Block, Schorr, Solis-Cohen, LLP
213 Market Street
9th Floor
Harrisburg, PA 17101

NAN DAVENPORT, ESQUIRE
Deputy Chief Enforcement Counsel
Pennsylvania Gaming Control Board
603 Stanwix Street, Suite 1200
Pittsburgh, PA 15222

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OPENING REMARKS

By Chairman Colins

5 - 6

STATEMENT

By Attorney Kohler

6 - 8

WITNESS: ROBERT SOPER

EXAMINATION

By Attorney Kohler

8 - 9

QUESTIONS BY BOARD MEMBERS

9 - 25

RE-EXAMINATION

By Attorney Kohler

25 - 26

QUESTIONS BY BOARD MEMBERS

26 - 46

DISCUSSION AMONG PARTIES

46 - 47

CERTIFICATE

48

E X H I B I T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>Number</u>	<u>Description</u>	<u>Page</u> <u>Offered</u>
---------------	--------------------	-------------------------------

NONE OFFERED

P R O C E E D I N G S

CHAIRMAN COLINS:

1
2 -----
3
4 Good morning, everyone. I think it's
5 still morning yet. I'm Judge Mary Colins. I'm the
6 Chairman of the Pennsylvania Gaming Control Board.
7 And the first thing I'm going to do is ask that you
8 turn off all electronic devices. And we have
9 Commissioner Angeli on the line, who's participating
10 via teleconference, and we have with us, Stacie
11 Amsler, who is representing Stephen Stetler, Secretary
12 of Revenue.

13 And there are a number of matters which
14 we will deal with before we begin our public meeting,
15 and the first item is a Petition filed by Downs
16 Racing. There are two Petitions actually filed by
17 Downs Racing. After that, we'll hear a Petition
18 regarding Mount Airy from the Trustee, and we'll now
19 begin with the Downs Racing matter.

20 I'll note that this matter was referred
21 to the Office of Hearings and Appeals (OHA) initially,
22 where an extensive record has been established. Our
23 purpose here is primarily to hear legal argument and
24 have the party witnesses answer questions that the
25 Board may have. And anyone who will testify in this

1 matter, I'd ask you to please take an oath.

2 -----

3 WITNESSES SWORN EN MASSE

4 -----

5 CHAIRMAN COLINS:

6 Thank you. And now I'll ask Counsel for
7 the moving party to proceed.

8 ATTORNEY KOHLER:

9 Thank you. Good morning, Madam Chairman,
10 good morning Commissioners. I'm Alan Kohler from
11 Wolf, Block on behalf of Downs Racing, and I have with
12 me this morning Jim Gardi (phonetic). If it pleases
13 the Board, I would like to call Mr. Soper for some
14 very brief testimony, and I presume you would want
15 that before legal argument, it is more in the category
16 of clean-up testimony.

17 CHAIRMAN COLINS:

18 Why don't you just state the issue before
19 the Board?

20 ATTORNEY KOHLER:

21 There were two witnesses that presented
22 testimony on behalf of Downs in this case, or MSPD,
23 Mohegan Sun at Pocono Downs. Mr. Soper was one of
24 them. Ms. Laurette Pitts, the former CFO of MSPD was
25 the other. Ms. Pitts has since --- I believe her

1 testimony was admitted into the record. Ms. Pitts has
2 since left her employment at MSPD. Mr. Soper is
3 prepared to accept her testimony as his own with the
4 permission of the Board. In any case, I wanted to
5 make the Board aware that one of the witnesses was not
6 available for that reason.

7 The second issue is since the hearings
8 were held in this matter and since the Findings of
9 Fact of the Hearing Examiner, MSPD has changed the
10 format of the gift certificate, what was once a gift
11 certificate is now a gift card. I think we're
12 probably all aware of what --- you know, while the
13 gift certificate would tend to be a piece of paper,
14 the gift card is in the form of a credit card. Other
15 than that, there's no --- there's no difference that
16 I'm aware of. Mr. Soper can testify to that, but I
17 wanted to get that on the record.

18 The third issue, which falls more into
19 the category of new testimony is the gift certificate
20 program is particularly active during the holiday
21 season, and of course, we've just gone through a
22 holiday season, and Mr. Soper is prepared, you know,
23 if you will, update the records as to the --- you
24 know, as to the summary and volumes of activity that
25 occur during this holiday period. That is not

1 critical to this record, but I thought it might be of
2 interest and we would at least offer that if the Board
3 pleases.

4 -----

5 ROBERT SOPER, HAVING BEEN PREVIOUSLY SWORN, TESTIFIED
6 AS FOLLOWS:

7 -----

8 EXAMINATION

9 BY ATTORNEY KOHLER:

10 Q. Good morning, Mr. Soper.

11 A. Good morning.

12 Q. Can you state your name and employer for the
13 record?

14 A. Yeah, Robert Soper, President and CEO, Downs
15 Racing, L.P.

16 Q. You heard my discussion, and you're aware that
17 there were --- that Downs Racing, MSPD presented two
18 witnesses in this case; ---

19 A. Yes.

20 Q. --- right?

21 A. Yes.

22 Q. And who were those witnesses?

23 A. Myself and Laurette Pitts.

24 Q. And what position did Ms. Pitts hold?

25 A. She was a CFO.

1 Q. And is she still employed by MSPD?

2 A. No, she's not.

3 Q. And what happened to her?

4 A. She left in December.

5 Q. Okay. Are you familiar with the testimony she
6 submitted in this proceeding?

7 A. Yes.

8 Q. And are you willing to accept that testimony as
9 your own if there's any questions from the Board
10 today?

11 A. Yes.

12 Q. Moving on to the next issue. Has MSPD changed
13 anything about their gift certificates since the
14 proceedings were held in this matter?

15 A. Yes. We no longer issue paper gift certificates,
16 we issue plastic gift cards instead. And the same
17 policies that we implemented before, and the same
18 processes, that we utilized both to issue --- to
19 purchase and redeem are exactly the same.

20 COMMISSIONER GINTY:

21 Is there any significance to your issuing
22 plastic cards as opposed to paper checks?

23 A. No, it's been merely for customer service reasons.

24 COMMISSIONER GINTY:

25 So that's not relevant to --- I mean, I

1 just want to make sure, these cards don't register
2 anywhere or identify anybody, or ---?

3 A. No. It's more --- it allows us to track more
4 easily, all redemptions, but the reality is, the
5 process and everything else is the same. So yes, it
6 really is not ---.

7 COMMISSIONER GINTY:

8 So Alan, there's no question whether
9 that's relevant to the issues here?

10 ATTORNEY KOHLER:

11 Yeah. I mean, you can argue whether it's
12 relevant, Commissioner, but it is a change in what is
13 on the record in this proceeding, and we just wanted
14 to make you aware of it.

15 CHAIRMAN COLINS:

16 Well, along the lines of the plastic
17 card, what happens to the plastic gift card once
18 someone purchases it and wants to redeem it? What
19 happens to it? Where do you take it to redeem it?

20 A. Just as the paper certificate, you can take it to
21 any location in our facility, any restaurant, any
22 retail shop. You can also --- and which is, you know,
23 the heart of the issue here, you can also take it to
24 the cage and redeem it there as well, and redeem it
25 for cash and use that cash for a slot play.

1 CHAIRMAN COLINS:

2 When it's redeemed --- I'm sorry, I was
3 going to ---.

4 COMMISSIONER GINTY:

5 Did I hear you say you can take that ---
6 the card to the cage ---

7 A. Correct.

8 COMMISSIONER GINTY:

9 --- and redeem it for cash?

10 A. Correct.

11 CHAIRMAN COLINS:

12 Now, when the card is swiped into your
13 system, does it contain player tracking information?
14 Does it link into your player tracking system?

15 A. The answer is, yes. When it's redeemed at the
16 cage, we know who is redeemed, and there's --- but
17 there is a manual input into the system so we can
18 track, so I don't want to portray it as completely
19 automated in the sense that if they were to go to the
20 cage and swipe, it populates certain fields in the
21 gaming system, but there is a process that when the
22 card is swiped and the money is removed, that
23 information is input into the system.

24 CHAIRMAN COLINS:

25 But the information is not input into

1 your player tracking system until its redeemed; is
2 that correct?

3 A. That is correct.

4 CHAIRMAN COLINS:

5 So if someone purchases the card, there's
6 no player tracking info input?

7 A. That is correct.

8 CHAIRMAN COLINS:

9 Okay. Thanks.

10 COMMISSIONER RIVERS:

11 Let me ask a question. Typically, how do
12 people purchase these cards, do they use credit cards
13 or do they use cash?

14 A. They use both. I would say there's more credit
15 card purchases than cash. Actually, there's more cash
16 than credit card.

17 COMMISSIONER RIVERS:

18 And typically, what's the turnaround
19 time, from the time that I purchase a gift card and I
20 cash the gift card in?

21 A. It's funny, because we did a report for this last
22 holiday season, and that's when the bulk of gift cards
23 are purchased now. And taking the period, I actually
24 have statistics on that --- taking a period from the
25 day after Thanksgiving through the month of December,

1 we had 6,200 gift cards purchased, of which so far
2 through December at least, 2,200 were redeemed, and it
3 varied across the Board of when they were redeemed.
4 Of that 2,200, though, what may be of interest is 113,
5 which is about five percent of them, were redeemed on
6 the same day. And what we often find, especially ---
7 yeah, five percent, especially if it's like a birthday
8 gift, that's when you see, or that type of gift. If
9 it's a special occasion gift, people will give the
10 gift card, and they say let's go out tonight to the
11 Mohegan Sun.

12 COMMISSIONER GINTY:

13 Am I mistaken, I thought when I read the
14 record that at least over some period of time, 91
15 percent of \$200 certificate purchased with credit
16 cards are redeemed the same day. Is that ---?

17 A. The historical information, it does reflect that.
18 This is a different time period, and what I'm
19 suggesting is, it's certainly changing, and in this
20 case --- and I can certainly forward you the
21 documentation, I'd be happy to do that ---.

22 COMMISSIONER GINTY:

23 Now, what I haven't seen in here is we
24 know --- we know then that 91 percent of \$200
25 certificates purchased with credit card are redeemed

1 in the same day. Do we know how many of those are
2 redeemed for cash, or do we assume they were all
3 redeemed for cash?

4 ATTORNEY KOHLER:

5 Commissioner Ginty, I actually have the
6 exhibit you're referring to, and I can tell --- it's
7 already in the record, but I can tell you that the
8 vast majority were redeemed for cash.

9 COMMISSIONER GINTY:

10 Okay.

11 ATTORNEY KOHLER:

12 However, I would add that there's various
13 --- as reflected in the record, and it's all in
14 Exhibit Four, there are various denominations of gift
15 certificates. There's a \$25, a \$50, a \$100 and a
16 \$200. As you might expect, the number of \$200 is very
17 small compared to even \$100, \$50 and \$25. And I
18 believe --- I can't give you an exact number off the
19 top of my head, but I believe for the time period
20 you're talking about, which is December to May of
21 2008, you're talking about probably about 30, 40, \$200
22 gift certificates. There were many, many more of the
23 lower denominations, and those had, you know,
24 relatively small same-day redemption statistics.

25 COMMISSIONER GINTY:

1 And do we know the percentage of those
2 that were ---?

3 ATTORNEY KOHLER:

4 Yeah, I can --- I'll tell you subject to
5 checking. I mean, I know --- you know, it was
6 certainly under ten percent, and I believe under five
7 percent for the smaller denominations, and I think it
8 was around 20, 25 percent for the \$100 card.

9 COMMISSIONER GINTY:

10 Were redeemed for cash or were redeemed
11 the same day?

12 ATTORNEY KOHLER:

13 Redeemed the same day.

14 COMMISSIONER SOJKA:

15 Okay. Could I ask in relation to that,
16 is your system good enough to be able to correlate how
17 many people who purchased one of these certificates
18 was actually the person that cashed it?

19 A. Yes. Well, here's what we do know. We do know
20 even in those numbers, we know that not one individual
21 redeemed for cash more than one time in a month. So
22 of the 30 or 40 of the \$200 gift certificates, for
23 example, that occurred on the same day in any given
24 month, not one of them were repeat redeemers, if you
25 will, for cash.

1 COMMISSIONER SOJKA:

2 Not repeat redeemers, but I'm asking, did
3 they redeem for cash on their own purchase?

4 ATTORNEY KOHLER:

5 They can't.

6 COMMISSIONER SOJKA:

7 They cannot?

8 ATTORNEY KOHLER:

9 They cannot. And that's been true
10 since ---.

11 COMMISSIONER SOJKA:

12 I'm sorry, I didn't ---.

13 ATTORNEY KOHLER:

14 I'm sorry, I was going to get into this
15 in my argument, but I might as well do it in response
16 to questions.

17 COMMISSIONER SOJKA:

18 Sure.

19 ATTORNEY KOHLER:

20 MSPD inherited this gift certificate
21 program from Penn National when they acquired Penn
22 National, obviously, on the horse racing side, when
23 gaming started in November of 2006, they merely
24 continued it. When they first started it on the
25 gaming side in November of 2006, we admit there were

1 some significant problems. At that time, you could
2 acquire a gift certificate in your own name and then
3 redeem it for cash yourself. And that continued for
4 some time, essentially until both MSPD and Board staff
5 realized, you know, there was some abuse going on,
6 some significant abuse. And there were certainly
7 people during that period, and we fully acknowledge
8 this, that were, you know, essentially using it to
9 bypass the credit prohibition, not with our consent,
10 by the way, but doing it nonetheless by purchasing a
11 gift certificate in their own name, walking across the
12 cage --- with a credit card walking across the cage
13 and then cashing that certificate.

14 Again, in the fall of 2007, MSPD and
15 Bureau of Investigation and Enforcement (BIE) and
16 Office of Enforcement Counsel (OEC) worked together,
17 you know, specifically to fix that problem. They came
18 up with five safeguards, which are in the record, but
19 which I'm pleased to go through one by one, and Mr.
20 Soper mentioned one of them, that you can only redeem
21 one per month. And the other --- the most important,
22 at least from my perspective being, that you can't put
23 the gift certificate in your own name, it has to be to
24 a third-party beneficiary.

25 Another sort of sister requirement of

1 that was that the third-party beneficiary had to be
2 identified on the certificate. One question I'm going
3 to ask of Mr. Soper is with the new gift cards,
4 whether he still shows the name on the certificate,
5 and I believe he will say yes. And then, you know,
6 identification has to be confirmed no matter where you
7 redeem the certificate.

8 So there were certainly some --- and this
9 transition took place in the September, October,
10 November 2007 period. We now have a year of
11 experience under those safeguards. Mr. Soper's
12 reported to you what the statistics are in this recent
13 holiday period, and our position is that we basically
14 fixed the problem, and to the extent that there
15 continued to be some problems into the spring of 2008,
16 you know, as we come around to the public meeting
17 today, we believe, you know, even with the \$200
18 denominations that there's no more abuse. And in
19 fact, given the safeguards, which are all in the
20 record and how they've been implemented, we're having
21 a hard time figuring out how --- obviously you can
22 come up with hypotheticals. If you go to the casino
23 with your friend and get them to buy a gift
24 certificate for you, I mean, there's always some room
25 for abuse, but we've done everything possible, and the

1 statistics bear out that we've been successful.

2 COMMISSIONER MCCABE:

3 I have a question along the lines of my
4 former background. My concern is being able to come
5 in and start smirking for money laundering. What kind
6 of reporting procedures do you have if somebody comes
7 in and --- or a group of people come in and purchase a
8 number of cards the same day for a certain amount?

9 ATTORNEY KOHLER:

10 We have the same, you know, Title 31
11 reporting requirements that we have, you know,
12 generally. Those would be handled by the cage
13 employees that are trained in Title 31. And one of
14 them, as you're probably aware, Commissioner, is
15 there's, I think, a report when there's \$5,000 worth
16 of activity and the aggregate. And we would have to
17 comply in the gift certificate area, just as we would
18 have to comply in any other area.

19 COMMISSIONER MCCABE:

20 So is there only one location in the
21 casino that you can buy the gift certificates?

22 A. That is correct. The retail stores where the gift
23 certificates can be purchased, and they can obviously
24 be redeemed anywhere, and I would just reiterate
25 without saying that, you know, all SAR/CTR

1 requirements still apply even though, frankly, when
2 you have a 200 maximum dollar limit that can be
3 redeemed, you know, for any month, there's probably a
4 very small likelihood, especially if you have, you
5 know, slot machines out there, you know, which would
6 be a far easier alternative than trying to utilize a
7 gift card program.

8 COMMISSIONER MCCABE:

9 Can you use the gift certificates that
10 you obtain here in Pennsylvania in Connecticut?

11 A. No, you cannot.

12 COMMISSIONER MCCABE:

13 So they have to be used here in
14 Pennsylvania?

15 A. They have to be used here, correct.

16 COMMISSIONER GINTY:

17 Alan, would you agree that when there was
18 abuse --- in other words, if I were to purchase a \$200
19 gift certificate, walk over to the cage and cash it
20 for coins so that I could use the slot machines, that
21 that was violative of the prohibition on the casino
22 accepting credit cards?

23 ATTORNEY KOHLER:

24 I think my best answer to that is, I can
25 come up with a legal argument that it's not, but we're

1 not here today to try to defend that, we're here today
2 to report to you that we've gotten rid of it. And you
3 know, we intend to get rid of it. That is not whether
4 I can come up with some interpretation of 1504 that
5 allows that activity, is essentially irrelevant,
6 because we do not want that activity in our facility,
7 and we also understand that regardless of any legal
8 argument, the Board probably wouldn't agree with us,
9 and that would be the expectation.

10 So we're not here to defend that
11 activity, we're here to report that to you that we've
12 done everything possible to get rid of that activity.

13 COMMISSIONER GINTY:

14 Well, let me take the next example then.
15 You know, Carol and I are at the slot machines, we use
16 up all our money, I talk Carol into using my credit
17 card, or our joint credit card to get a \$200 gift
18 certificate, she gives it to me as a third-party, I
19 cash it, would that be violative?

20 ATTORNEY KOHLER:

21 I think that's an activity that certainly
22 we want to deter, but those are the kind of things
23 that, you know, could, no matter what you do, if the
24 patron --- I think this is not only true in gift
25 certificates, it's true in a number of areas.

1 COMMISSIONER GINTY:

2 You're right, in worst case, that's de
3 minimis, that type of activity.

4 ATTORNEY KOHLER:

5 I think if --- I mean, if you're creative
6 enough, maybe you can find a way to figure out how to
7 get around the system. All I can say is, we've done
8 everything possible to prevent that, and the
9 statistics bear out that we've generally been
10 successful.

11 CHAIRMAN COLINS:

12 Mr. Kohler, the statistics that you've
13 given to us today on the record for that period, that
14 holiday gift period, November through Christmas, those
15 statistics, does the internal control that you have in
16 place require that you collect those statistics on an
17 ongoing basis, or were these statistics done as part
18 of your support of your petition? I'm asking this
19 because it might be a way to control abuse.

20 ATTORNEY KOHLER:

21 One of the five safeguards that MSPD has
22 put in their internal controls is to track redemptions
23 in the same manner that licensees are required to
24 track personal check cashing. That's the requirement.
25 I mean, I can tell you ---.

1 CHAIRMAN COLINS:

2 Is that how you captured these
3 statistics?

4 A. This actually was done in preparation of the
5 hearing, but we do capture those statistics, and yes,
6 because we track it, it makes the information easier
7 to obtain.

8 ATTORNEY KOHLER:

9 And my point was, the reporting that they
10 actually do goes well beyond that safeguard. They can
11 track every aspect, not just the redemption aspect of
12 the program, which is required by the safeguard.

13 CHAIRMAN COLINS:

14 So then if this internal control, or if
15 we agreed that it should remain in effect, you would
16 have the ability to track this information on an
17 ongoing basis to monitor abuse; is that correct?

18 A. That is correct. We're doing it now, and we'd be
19 happy to provide, you know, reports.

20 COMMISSIONER MCCABE:

21 My understanding is that these gift
22 certificates expire; is that correct?

23 A. They do expire.

24 COMMISSIONER MCCABE:

25 What happens to the gift certificates

1 that haven't been redeemed yet?

2 A. What happens if they haven't been redeemed?

3 COMMISSIONER MCCABE:

4 Haven't been redeemed. How do you carry
5 that money on your books then?

6 A. Oh, yeah, this goes back to the escrow sheet,
7 unclaimed property ---.

8 CHAIRMAN COLINS:

9 Well, how's it treated in terms of gaming
10 revenue?

11 A. It doesn't impact gaming revenue.

12 COMMISSIONER MCCABE:

13 And it goes back on the sheet how,
14 unclaimed?

15 A. Yeah, how a normal gift card at any establishment
16 would be treated, it's considered an unclaimed
17 property that individuals later can, I guess, petition
18 or, you know, have access to. They're able to show
19 that they are the owners of that property.

20 COMMISSIONER MCCABE:

21 What's the normal period that these gift
22 certificates are good for?

23 A. I will have to get back to you to confirm. I
24 think it's a year, but I will get back with that
25 number.

1 COMMISSIONER GINTY:

2 I thought under Pennsylvania law there
3 was no expiration?

4 A. Yeah, it may have changed when the law --- I need
5 to get back because I don't know with a hundred
6 percent certainty. I know at one time they expired,
7 whether they do now and what that time period is, I'll
8 get back to you.

9 CHAIRMAN COLINS:

10 Go on. Mr. Kohler, you were going to ask
11 Mr. Soper a question. You were hypotheticating that
12 his answer would be yes to a specific question.

13 ATTORNEY KOHLER:

14 Oh, yeah.

15 CHAIRMAN COLINS:

16 But we don't have that answer on the
17 record yet.

18 ATTORNEY KOHLER:

19 Okay.

20 CHAIRMAN COLINS:

21 Yeah, I forget it, too.

22 RE-EXAMINATION

23 BY ATTORNEY KOHLER:

24 Q. Under MSPD's gift certificate program, is a person
25 permitted to acquire a gift certificate in his or her

1 own name?

2 A. Acquire it --- he is considered --- what happens
3 is, I'll just clarify it. I actually have the gift
4 card. There are two blanks on the gift card, one is
5 the purchaser, which is from, on the back, and so when
6 he purchases, it does go on the gift card as the
7 purchaser from, and then just as in the gift
8 certificate there's a blank in the front of the card
9 who they write the name to who it's from, and it is a
10 different to --- excuse me, to, and when --- there has
11 to be a name on there, and when they go to the cage,
12 if they want to redeem it for slot play, then they
13 have to show an ID that it's their name on there, on
14 the front.

15 Q. Would I be able to go to the gift shop, acquire a
16 gift card and ask that it be made to the benefit of
17 myself so that I could redeem it?

18 A. I don't believe they are. I think that's part of
19 our internal controls.

20 Q. Okay.

21 A. So you couldn't be the same person on the back and
22 front.

23 COMMISSIONER GINTY:

24 Is that a no answer or ---?

25 A. Well, I want to confirm a hundred percent. I know

1 internal controls, which do apply for this, so no the
2 answer would be.

3 COMMISSIONER GINTY:

4 I mean, I think that's very important ---

5 A. Yeah.

6 COMMISSIONER GINTY:

7 --- that we have that, ---

8 A. Yep.

9 COMMISSIONER GINTY:

10 --- something definitive.

11 A. No.

12 COMMISSIONER RIVERS:

13 How do you confirm who the purchaser
14 happens to be if I'm using cash?

15 A. Yeah. What happens is, when the --- if you're
16 using cash, then --- well, hypothetically, it
17 shouldn't matter because you're using cash, but they
18 have to give them their name, and they ask for an ID,
19 and then when you go to the --- and they have to write
20 a name on the tube, and they go to the cage. So they
21 redeem --- there's twice --- two periods of time where
22 an ID is asked to confirm, one, for the purchaser,
23 which is your question, and then one the redeemer when
24 they actually redeem it.

25 COMMISSIONER ANGELI:

1 This is Ray Angeli. Cash wouldn't make
2 any ---.

3 COMMISSIONER RIVERS:

4 What do you see as the advantage of doing
5 this?

6 COMMISSIONER ANGELI:

7 Hello? Can you hear me?

8 CHAIRMAN COLINS:

9 Can you speak up a little, please? Speak
10 up, Ray, please?

11 COMMISSIONER ANGELI:

12 Yes. I was saying cash really wouldn't
13 make a difference, cash wouldn't violate any
14 Regulation; right?

15 A. Yeah, we certainly believe it wouldn't.

16 CHAIRMAN COLINS:

17 Ray, did you say, in fact, that cash or
18 credit, it really doesn't make a difference in terms
19 of tracking?

20 COMMISSIONER ANGELI:

21 No, I said it the other way around. Cash
22 wouldn't make a difference; would it?

23 A. He's saying if the gift card was purchased with
24 cash, it doesn't implicate any of the ---.

25 CHAIRMAN COLINS:

1 Credit --- right, it doesn't --- credit
2 issues, okay.

3 COMMISSIONER RIVERS:

4 But isn't that a way you can actually
5 launder money, though, if you're using cash?

6 A. I guess, theoretically, like anything, if you're
7 willing to try to launder \$200 once a month through
8 the gift card program, I guess hypothetically you
9 could, but it probably wouldn't be very logical. I
10 mean, you might as well, in that case, put the money
11 in a slot machine, you know, and purchase a ticket and
12 redeem the ticket. You know, that would be --- you
13 know, I don't think it's really much of a concern.

14 COMMISSIONER RIVERS:

15 I just wanted to get that on the record.

16 CHAIRMAN COLINS:

17 Are there any other questions?

18 COMMISSIONER SOJKA:

19 I just want to touch one other one, too,
20 and I fully understand that this about you not being
21 able to essentially issue credit, but from a practical
22 point of view, you do have, on the premise, ATM
23 machines; is that not correct?

24 A. That is correct.

25 COMMISSIONER SOJKA:

1 So if someone wanted cash in order to
2 play and use a credit card to do that, they could do
3 it in a perfectly legitimate way at an ATM?

4 A. That is correct.

5 COMMISSIONER SOJKA:

6 Okay. Thank you.

7 A. That is correct. And I think that's why the
8 numbers are bearing out, the fact that this is truly
9 being used for gift cards. I mean, the fact is, when
10 someone wants to go and buy \$100 gift card, they may
11 not have \$100 in cash.

12 COMMISSIONER GINTY:

13 I'm beginning to understand. I am still
14 amazed that 91 percent of \$200 credit card gift
15 certificates are redeemed the same day and the vast
16 majority are redeemed for cash. I mean, what's
17 driving that? What ---?

18 A. One, I would just, again, on that statistic, you
19 know, point out what Al pointed out earlier. Overall
20 --- if you look at overall, it's a very small
21 percentage of all those purchased and redeemed, the
22 \$200. So if you look at the big picture, it's a very
23 small number that's purchased and redeemed on the same
24 day. But I think what's driving, you know, and just
25 interacting with customers is it's a form of

1 entertainment, very popular in Northeast Pennsylvania,
2 and you know, there was a lot of trips to Atlantic
3 City and not as many now. And it's just a great ---
4 it's a great gift, and it's just extremely popular.

5 I mentioned before, you know, 6,200 gift cards,
6 I'm not sure Wal-Mart issues 6,200 gift cards, in the
7 local Wal-Mart anyways, that's right down the road,
8 and all I can say is, it's really a consumer demand.
9 It's a form of entertainment that they enjoy, and want
10 to get as a gift.

11 ATTORNEY KOHLER:

12 I will say that one statistic that I'm
13 fully aware of that you pointed to, one that actually
14 came out in the Hearing Examiner's report and was a
15 compilation of data, some of which we submitted as
16 late filed exhibits, and he actually computed that
17 going through the various spreadsheets, and that
18 number is something that got our attention, and you
19 know --- you know, tried to figure out was going on
20 there.

21 All I can tell you is that I --- that,
22 you know, it seems to have been dramatically reduced
23 in this holiday season. I'm not sure we can point to
24 anything we did that caused that reduction. The only
25 thing I would say is that unlike the other

1 denominations, the population of \$200 gift
2 certificates for the period that the 91 percent
3 applied was fairly small. Other than that ---.

4 CHAIRMAN COLINS:

5 Well, Mr. Kohler, wait. Let's look at
6 the statistics, because if you cut down the universe
7 to the gift season --- do you know what I mean? If
8 you're taking your numbers just from the gift season,
9 which is what you've done, the height of gift giving,
10 the Christmas season, you're going --- those
11 statistics are not --- are going to be very different
12 if you spread it out over the year. So I'm not saying
13 --- I'm not saying they're inaccurate statistics, I'm
14 just saying based on how they're arrived at, they do
15 have a different color to them.

16 ATTORNEY KOHLER:

17 Yeah, I agree. And we're not trying to
18 deny that the 91 percent was a bothersome number. All
19 the other numbers supported the fact that we had fixed
20 everything. That was still troubling. Again, we're
21 --- this is ongoing and we have no desire for what we
22 can --- whether it be illegal or not, we have no
23 desire for what we consider to be improper activity in
24 using the gift certificate program for a person to get
25 credit to play slot machines him or herself.

1 CHAIRMAN COLINS:

2 Perhaps that statistic may show that at
3 least during that period, the vast majority of the
4 gift cards were, in fact, not redeemed the same day
5 for that period of time.

6 ATTORNEY KOHLER:

7 Perhaps.

8 CHAIRMAN COLINS:

9 Okay. Any other questions?

10 COMMISSIONER ANGELI:

11 Yeah. Can you hear me, Mary? Mary?

12 CHAIRMAN COLINS:

13 Yes, Ray. Could you speak up again,
14 please?

15 COMMISSIONER ANGELI:

16 Okay. Just one issue, and I think it was
17 brought up to the ATM, which made me curious. It's
18 the bank that owns the --- you owe the --- the casino;
19 isn't that correct, when you do it this way?

20 CHAIRMAN COLINS:

21 Ray, we can't --- we're not getting a
22 clear transmission. Could you speak --- if you don't
23 mind speaking in an exaggeratedly slow way, please?

24 COMMISSIONER ANGELI:

25 Okay. The issue with the ATM, when you

1 take money out of the ATM, it's the bank you owe a
2 credit to; isn't that the same thing when you use a
3 credit card to purchase a gift certificate, it's not
4 the casino you owe money to, but the bank?

5 CHAIRMAN COLINS:

6 Mr. Soper, did you understand that
7 question? If you did, would you repeat it?

8 A. Yes. When you purchase a gift card with a credit
9 card, it's the bank you owe, it's not the casino, and
10 that is the heart of the legal argument, which we're
11 not talking about. In fact, we're not extending
12 credit at all, because they don't owe us anything like
13 you would for a game, they owe the bank.

14 COMMISSIONER GINTY:

15 That's not part of the Statute that
16 troubles me. Ray, the Statute also prohibits the
17 casino from accepting credit cards for wagering. So
18 if the casino is handing out --- is exchanging,
19 basically cash for credit cards, no matter where it's
20 done, it arguably would be violative of the law.

21 ATTORNEY KOHLER:

22 The only thing I would point out,
23 Commissioner Ginty is that there's a distinction under
24 the Statute 1504, when you're using a credit card to
25 purchase a gift certificate, that you then turn around

1 and cash and use for slot play. And when you're
2 purchasing a gift certificate for the benefit of
3 someone else, you give it to that third person, and
4 that third person cashed it for slot play, and the
5 reason for that is Section 1504 speaks to the player
6 using the debit card or credit card to acquire slots
7 play. And here it wouldn't be the player that would
8 be doing that, that's assuming that, you know, our
9 safeguards are effective in deterring the other
10 activity.

11 COMMISSIONER GINTY:

12 Yeah, I accept that.

13 CHAIRMAN COLINS:

14 All right. At this point then, do you
15 have anything --- any further testimony? If not, do
16 you have any further statement by way of closing?

17 ATTORNEY KOHLER:

18 No further testimony.

19 CHAIRMAN COLINS:

20 Thank you.

21 ATTORNEY KOHLER:

22 I think I pretty much covered my legal
23 argument in answering questions. I think the point I
24 just mentioned that --- you know, under the gift
25 certificate program, you can't get a gift certificate

1 to your own benefit, therefore, it's not --- you know,
2 even if the beneficiary, the third-party beneficiary
3 goes to the cage, cashes it and used it to play a slot
4 machine, it's not the player that acquired that play.

5 I think that the only other point I'd
6 like to make, I think the underlying --- I think we'd
7 all agree, the underlying policy and intent behind
8 1504 is to control patron gambling by keeping the
9 player from dipping into credit accounts and
10 restricting play to essentially available cash. In
11 essence, to deter players from spending above their
12 means.

13 However, here the purchaser of the gift
14 certificate can't redeem the gift certificate, they're
15 giving it to someone else, and I don't --- I just
16 don't see a policy in 1504 that would deter what a
17 person can give as gifts as far as visits to the
18 casino, so not only does it fall outside of the strict
19 language of the section, but I think it pretty clearly
20 falls outside the intent of the section, and for that
21 reason, you know, we believe the gift certificate
22 program, as modified, in our work with Board staff
23 back in the fall of 2007, it is legal, and it's
24 certainly something that our patrons want and demand.

25 CHAIRMAN COLINS:

1 Okay. Thank you very much. What we're
2 going to do ---.

3 COMMISSIONER GINTY:

4 One question.

5 CHAIRMAN COLINS:

6 Okay. And then I want to wrap it up.

7 COMMISSIONER GINTY:

8 Assume for a minute that there's a
9 finding that issuing credit cards and getting cash
10 back, for a minute, does violate the Section. How do
11 you argue that that doesn't extend itself over to the
12 parimutuel betting side of the ---?

13 ATTORNEY KOHLER:

14 Well, because those requirements don't
15 apply to parimutuel. I mean, I can go to --- I don't
16 want to use any particular facility as an example, but
17 I can go to the horse racing side of the place down
18 the road and properly get cash on my credit card as
19 long as I'm on the parimutuel side. I believe that's
20 the case. I think that's true generally. I mean, the
21 credit prohibition only --- doesn't -- as far as I
22 know, doesn't apply on the parimutuel side. There's
23 no credit prohibition in the Horse Racing Act.

24 CHAIRMAN COLINS:

25 Okay. Thank you. We're going to hold

1 this under advisement.

2 COMMISSIONER RIVERS:

3 Madam Chair?

4 ATTORNEY DAVENPORT:

5 We have some questions for Mr. Soper.

6 CHAIRMAN COLINS:

7 I'm so sorry. I'm so sorry, please go
8 on.

9 ATTORNEY DAVENPORT:

10 Mr. Soper, ---.

11 COMMISSIONER GINTY:

12 Name?

13 ATTORNEY DAVENPORT:

14 Oh, I'm sorry. Nan Davenport, Deputy
15 Chief Enforcement Counsel for the OEC. Mr. Soper, I
16 believe you testified that when the gift cards are
17 redeemed, the identity of the person redeeming them is
18 verified; correct?

19 A. Correct.

20 ATTORNEY DAVENPORT:

21 Okay. But I also believe you testified
22 that the only place that the gift cards can be
23 purchased is at the retail store; is that correct?

24 A. That is correct.

25 ATTORNEY DAVENPORT:

1 Are the clerks at the retail store
2 licensed by the PGCB?

3 A. I do not believe they are licensed. I think they
4 don't have a gaming license.

5 ATTORNEY DAVENPORT:

6 Are the clerks in the retail store versed
7 in Title 31 compliance?

8 A. I don't --- I'm not sure. I couldn't confirm one
9 way or the other on that. I don't know if they've had
10 the Title 31 training. They could have, because we
11 have a jewelry store, and there may be --- but I don't
12 know, so I don't want to answer that.

13 ATTORNEY KOHLER:

14 We'll stipulate that the record reflects
15 they are not.

16 ATTORNEY DAVENPORT:

17 Thank you. You stated that the gift
18 card, the purchaser's name is on one side, recipient's
19 name is on the other side, how is that placed on the
20 gift card; is that handwritten, is there ---?

21 A. Yeah, it is handwritten.

22 ATTORNEY DAVENPORT:

23 So it's possible that somebody could
24 easily wipe off the name and replace it?

25 A. I don't think so, because these cards are like if

1 you have a credit card, on the back, they have that
2 permanent --- it's that permanent background. I
3 actually have it here, at least on the back. I don't
4 believe --- actually, I'll try it right now, just ---
5 it would be very noticeable if you did, in my view.
6 It would be easily visible as far as it being
7 manipulated and altered.

8 ATTORNEY DAVENPORT:

9 So only one side of the card has that
10 area that would be like a credit card that would be
11 tough to ---?

12 A. I think both sides are like that actually. These
13 are --- actually these types of cards were made
14 specifically, or ordered specifically with the two
15 blanks, and I'd be happy to leave one --- leave a
16 sample for the Board, and I brought extras. So you
17 can see here, I wrote my name, and you need a marker,
18 but I can't rub it off. I mean, it's --- it would
19 look ---.

20 ATTORNEY DAVENPORT:

21 Okay. With respect to the internal
22 control slip MSPD submitted, that was with respect to
23 gift certificates, paper gift certificates with two
24 different colors; correct?

25 A. Correct.

1 ATTORNEY DAVENPORT:

2 And now you're using these gift cards;
3 correct?

4 A. Correct.

5 ATTORNEY DAVENPORT:

6 Have you amended your internal controls
7 to reflect that?

8 A. We have not. We just implemented this program,
9 but this is going to have --- the rules that apply to
10 this gift card, the strict --- the stringent standards
11 apply --- we're applying the same rules for cash and
12 credit purchase now. We have ordered a separate
13 colored gift card. Once those come in, then we'll
14 have the more lenient rules to the other color, but
15 right now, we're applying the same stringent rules as
16 we did to both color gift certificates to this gift
17 card.

18 ATTORNEY DAVENPORT:

19 With respect to the internal controls
20 that you have in place now with respect to gift cards,
21 gift certificates, are there any restrictions or
22 safeguards with respect to prohibitions on extending
23 privileges to those under 21 or to people on the self-
24 excluded list?

25 A. We do have a process on self-exclusion list, where

1 --- during the redemption process. So if anybody
2 tried to redeem for cash at the cage, then the process
3 is first to see if they're on the self-excluded list,
4 and two, see if they're on that list of individuals
5 for that month that have actually redeemed a
6 certificate for cash. In regards to redeeming it at
7 other locations, the answer is no.

8 ATTORNEY DAVENPORT:

9 But isn't it correct that you can only
10 redeem at the cage --- or I'm sorry, you can redeem
11 it ---.

12 A. Anywhere. Restaurants, retails, yeah.

13 ATTORNEY DAVENPORT:

14 But that's only with redemption. So it's
15 possible that somebody under 21 or somebody on
16 self-excluded or possibly excluded list can come in
17 and actually purchase a gift card?

18 A. That is correct.

19 ATTORNEY DAVENPORT:

20 There's no safeguards with respect to
21 that?

22 A. No, there's no safeguards, but there's really no
23 risk of violation, in our view, simply because if
24 someone under the age of 21 could buy a gift card for
25 their dad, and then they wanted to go redeem it at

1 Johnny Rockets or Ben & Jerry's, they could do so, and
2 there'd be no violation.

3 ATTORNEY DAVENPORT:

4 Thank you. No further questions.

5 COMMISSIONER MCCABE:

6 I have a question for OEC.

7 ATTORNEY DAVENPORT:

8 Yes.

9 COMMISSIONER MCCABE:

10 Would you object if these gift cards
11 could only be purchased with cash and we took credit
12 card purchases totally out of the equation?

13 ATTORNEY DAVENPORT:

14 Commissioner, I think there are still a
15 lot of other issues that need to be looked at with
16 respect to that. We wouldn't be looking at an
17 extension of credit in that case, but we still might
18 have to consider Title 31 compliance, as well as my
19 question with respect to extending privileges to those
20 under 21, self-excluded. So I think this is something
21 that staff needs to take a better look at. And my
22 recommendation is that back on January 8th, 2008, the
23 Office of Gaming Operations (OGO) sent Mohegan Sun a
24 letter, requested it submit the internal control
25 amendment form, which modifies the gift certificate

1 program that we thought was in place at the time, to
2 indicate all gift certificates however purchased,
3 include a statement that they have no cash value.

4 So therefore, they could only be redeemed
5 for --- I'm sorry, they could only be redeemed for
6 goods or services. I think that would alleviate some
7 of the problems, so while the Board is considering
8 this, OEC's recommendation is that Mohegan Sun comply
9 with the OGO's January 8th letter, and so therefore
10 the gift cards would have no cash value, it could only
11 be used for goods and services.

12 COMMISSIONER GINTY:

13 And do you interpret Section 1504 so as
14 to preclude somebody purchasing a gift card in any
15 denomination and giving it as a present to somebody
16 who could go in and cash it and play the slot
17 machines?

18 ATTORNEY DAVENPORT:

19 Commissioner, 1504 states that slot
20 machine Licensees may not extend credit, and it goes
21 on to further state may not extend credit in any
22 manner, and I believe that allowing the patron to
23 purchase a gift card with a credit card can be
24 violative of 1504. I think that's something that
25 staff needs to look at, and if OEC has no --- we don't

1 object to the use of these gift cards, we think there
2 has to be many restrictions in place to prevent not
3 only violations of 1504, but also violations of
4 465a.20(b)(6) of the Regs with respect to personal
5 checks. There's a provision that personal checks may
6 not exceed \$2,500 per patron per gaming day. So
7 that's something that also the staff needs to consider
8 with respect to maybe drafting the Regulations for
9 gift cards and gift certificates.

10 COMMISSIONER GINTY:

11 I'm going to let this go, because I know
12 we're using up a lot of time.

13 ATTORNEY KOHLER:

14 Can I respond?

15 COMMISSIONER GINTY:

16 There's a lot of --- there's a lot of A
17 players in here, and that term is used more times than
18 I probably appreciated. So I would like both parties
19 to brief the issue as to exactly what 1504 says. Is
20 it the same player that they're referring to the two
21 or three times that that term is used, or can it be
22 read so as to preclude anybody from purchasing a card
23 for somebody else for gambling purposes?

24 ATTORNEY KOHLER:

25 The one thing I wanted to make clear, and

1 I know you want to get moving on to the next thing, is
2 we're pleased to sit down with staff and try to fine
3 tune the internal controls in order to address any
4 problems that they've identified. Their position in
5 this proceeding was that the gift cards were illegal
6 no matter where they were purchased, for cash or
7 credit, and there was no wiggle room, period. So we
8 haven't had that discussion, but if this is a matter
9 of, you know, tightening things up further, we think
10 we have --- we used to do that, and we want them to be
11 as tight as possible, so ---.

12 CHAIRMAN COLINS:

13 Well, we're going to --- as I mentioned
14 before, we're going to hold this under advisement.
15 You'll have the opportunity not only to submit the
16 briefs but to meet with staff, because I think the
17 main concern I have is that we want to make sure that
18 we're not allowing it to be institutionalized, a
19 system where basically a player is going in and is
20 buying chips to then go use in the casino. That's not
21 a subterfuge for that type of negotiation. And if
22 there's a way of providing safeguards that avoid that,
23 I think you should explore it. But in the meantime,
24 we're going to schedule it for our next public
25 meeting, February 3rd, and thank you.

1 Now we'll go on to the next ---.

2 COMMISSIONER GINTY:

3 Alan, maybe you could get some of your
4 colleagues in the other casinos to also let us know
5 what they think?

6 ATTORNEY KOHLER:

7 I'll certainly raise that. When would
8 the briefs be due?

9 CHAIRMAN COLINS:

10 Well, we're scheduling this for the next
11 meeting, so I'll ask you to have the briefs --- give
12 you five days, and then response time, five days from
13 then.

14 ATTORNEY KOHLER:

15 Okay.

16 CHAIRMAN COLINS:

17 That gets us up to February 1st, about
18 February 1st. The next meeting's February 3rd.

19 ATTORNEY KOHLER:

20 Thank you.

21 CHAIRMAN COLINS:

22 Thank you.

23 * * * * *

24 HEARING CONCLUDED

25 * * * * *