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Casino-Free
Philadelphia
www.CasinoFreePhila.org



Because of His Abandonment of the People, Decker Must Go

Casino-Free Philadelphia calls for the immediate resignation or removal of Thomas A. Decker, the current Chairman of the Pennsylvania Gaming Control Board. Mr. Decker, by his acts and his statements, has demonstrated he is not suited for his office.

We believe he has had improper meetings with SugarHouse lawyers, further suggesting a corrupted system. We further assert he has failed to be open about his conflicted interests, including a political affiliation with Governor Rendell that has blinded his duty to the public and a relationship with Cozen O'Connor that was improperly handled.

The citizens of Pennsylvania deserve to have confidence in the integrity and impartiality of the people regulating the gaming industry and in our opinion Mr. Decker falls far short of this standard.

Finally, he has abandoned his role to protect the people and is siding with the casino industry's profit, no matter at what social cost. He has made decisions without social standards and is trying his hardest to stop the public from voting on the first attempt at a clear, minimum standard to keep casinos from being built next to schools, places of worship, and homes. This is the danger of a state getting addicted to casino revenue and willing to run roughshod over people's neighborhoods.

Because of his near complete abandonment of the people, we believe he has run the worst regulatory body in Pennsylvania, one that protects profit not people. He should resign or be removed immediately.

The Chairman Is Supposed to Instill Confidence in His Integrity

An express purpose of the Pennsylvania Race Horse Development and Gaming Act (the "Gaming Act") is to "maintain the integrity of the regulatory control and legislative oversight over the operation of slot machines in this Commonwealth; . . . and avoid actions that may erode public confidence in the system of representative government." 4 Pa.C.S. § 1102. The Gaming Control Board is an "independent" agency. 4 Pa.C.S. § 1201(a). This means that the members of the Board are appointed for a set term. This is supposed to provide Board members with a good degree of independence from the politicians who appointed them. For this system to work, we need to have confidence that the Gaming Board members have integrity.

On February 13, 2006, the Board adopted an ethics policy. “For the public to have confidence in this process, and to fulfill our mission of protecting the people of Pennsylvania, we have to set and live by the highest standards of personal and professional conduct,” said Chairman Tad Decker. “The policy we adopted today demonstrates the Board’s commitment to setting and maintaining these standards and ensures that all applicants receive due process from this Board.”

The Board’s press release http://www.pgcb.state.pa.us/press/pr_021406.HTM; and the ethics policy: http://www.pgcb.state.pa.us/regulations/Ethics/ethics_final_rev030306.pdf

The ethics policy prohibits any Board member from quitting to work for any “applicant, licensed gaming entity, its affiliate, subsidiary or holding company” for a period of one year after leaving the Board. There does not appear to be any prohibition or waiting period for doing legal work for a casino. The revolving door spins quite well in Pennsylvania. Will the door on the Gaming Control Board start spinning soon?

Governor Rendell handpicked Mr. Decker to be Chairman

Governor Ed Rendell and Tad Decker have known each other for years. Rendell was the Mayor of Philadelphia. Decker was an important lawyer in town. There’s always been a close connection in Philadelphia between lawyers, campaign donations and local politicians.

Mr. Decker has an interesting viewpoint on law firms who are especially close to politicians. In August 2004, as the City of Philadelphia was considering whether to prohibit the steering of the public’s legal business to law firms who contributed to City politicians, Mr. Decker spoke out against it. As reported in The Legal Intelligencer:

Cozen O'Connor managing partner Tad Decker said while he understands the need for reform, he's not so sure it's a great idea to keep a firm from city work for making campaign contributions. "I was personal friends with Ed Rendell and I contributed to his campaigns when he ran for district attorney and mayor," Decker said. "Should my firm have been debarred from doing city work?" "I think there has to be some consideration for what the client wants. And if a city manager has a good relationship with a lawyer and the lawyer does good work, why create problems by cutting that lawyer out of the loop?" Decker continued, "It's one thing if a firm has made an extraordinary contribution. I don't have a problem with a reasonable cap but you can't cut someone out because one of their partners gave \$500."

<http://www.law.com/jsp/article.jsp?id=1090180367019>

But, from media accounts, Mr. Decker was never the type of lawyer who contributed \$500. As reported, according to state records Decker donated \$5,000 to Rendell in 2001, made

four contributions totaling \$106,000 in 2002 -- the year Rendell won the governorship -- and contributed another \$2,000 in January 2003, the month Rendell took office.

<http://www.post-gazette.com/pg/04289/396175.stm>

A few months after the Intelligencer article appeared, Rendell picked Decker to head up the Gaming Control Board. Whose interest was Decker going to be serving? Was he going to be an impartial regulator to make sure people have trust in the way Pennsylvania handles the gambling industry? Or was he going to do whatever Rendell wanted? As he said when he was appointed, "I am fascinated with the prospect of working with the Board in crafting and implementing rules that will help to shape the industry, and think my years of experience in corporate management and law have readied me to serve Governor Rendell proudly." <http://www.state.pa.us/papower/cwp/view.asp?A=11&Q=438637> (emphasis added). That's not right Mr. Decker, you're supposed to be an unbiased regulator, not the Governor's guy.

Might the Revolving Door be About to Spin Again?

And at the time Rendell selected Decker to become the Chairman of the Gaming Control Board, Mr. Decker was the managing partner of Cozen O'Connor, a prestigious law firm in Philadelphia. OK, maybe it's not so bad. Everyone has good reputations and it appeared that Mr. Decker made a clean break. Let's look at this a bit more.

As it turned out, sometime after Mr. Decker left Cozen O'Connor, the law firm picked up Sugarhouse Casino as a client. Sugarhouse is one of the two casino applicants in Philadelphia to whom Decker's Gaming Control Board granted a license in December 2006. Sure the Cozen firm is a good firm so maybe that is why the casino sought them out. Could it be just a coincidence that the Board issued a license to a client of Mr. Decker's former firm? Was Mr. Decker planning on returning to Cozen O'Connor to help represent Sugarhouse in the future? We don't know the answers to these questions but our confidence in Mr. Decker is certainly shattered.

It's not a stretch for folks to believe that Mr. Decker might return to the Cozen firm. In 2004 when Decker resigned as managing partner of the firm, the firm's CEO Patrick O'Connor said that Decker will be missed and, after his service on the gaming board, he could be a logical replacement for O'Connor as CEO. "There's always going to be a place here for Tad Decker," O'Connor said.

<http://www.bizjournals.com/philadelphia/stories/2004/12/20/daily16.html> What does it say when a firm that has gambling clients makes a public job offer to the chief gambling regulator in the state?

Well, this is Philadelphia and people talk and, sure enough, a story leaked out. In November 2006, a Philadelphia Daily News article attributed to a "well-placed source" that Mr. Decker wants to leave the Gaming Control Board reportedly to go back and head his city law firm, Cozen O'Connor. <http://www.razzbet.com/When-it-comes-to-slots.html>. This was 30 days before the Board was to vote on the Sugarhouse license.

Soon after the paper hit the streets the attempted explanations began. A week later, in an interview with a blogger at The Legal Intelligencer, the firm's Chairman Stephen Cozen said that "It is untrue that we are talking to Tad Decker about coming back and taking any leadership role at this time" and that "as long as he is in that role [with the Gaming Control Board], we do not want to discuss these kinds of issues with him." Stephen Cozen did say, however, that the firm periodically meets with Decker to talk about firm issues if the firm leadership thinks Decker might have some insights. [We'll come back to this last statement in a minute!] <http://thelegalintelligencer.wordpress.com/2006/11/20/cozen-no-talks-with-decker/> (underlining added)

Then the vote. On December 20, 2006 it was time for the Board to vote on the Sugarhouse application. On that day, in the public meeting, just minutes before that vote, Mr. Decker recused himself from the vote. Why did Mr. Decker recuse himself from the vote?

And if he recused himself from the *vote*, why didn't he recuse himself from the *hearings* that occurred weeks before in which Sugarhouse presented its case to the Board. The Gaming Act requires recusal from any "proceeding" not just the final vote. So why did Decker recuse himself from the vote but not from the proceeding? When did Mr. Decker become aware of the situation that caused his recusal. Why doesn't Mr. Decker divulge all the specifics? What did he know and when did he know it?

Now getting back to that blog. What does it mean when Mr. Cozen says that the firm periodically meets with Decker to talk about firm issues? The Cozen firm represents Sugarhouse and Decker is the state's main gambling regulator. Is it appropriate that the law firm talks to Decker, and that one month before the licensing vote, it is said that these meetings happens periodically? Doesn't this erode public confidence in Mr. Decker?

To this day, Cozen O'Connor's website boasts that its former managing partner is "currently serving as chairman of the new Pennsylvania Gaming Control Board." What is the message the firm is sending to potential clients? What is the message that the website sends to the public? http://www.cozen.com/industry_sector_detail.asp?d=1&isid=8

What's With Mr. Decker and Foxwoods?

At the licensing hearings Foxwoods told the Board that they had no interests in Atlantic City and that they'd compete head-to-head. In its adjudication explaining its licensing decisions, Mr. Decker wrote that the licensee's lack of connection with Atlantic City was a significant reason for the Board awarding the licenses to Foxwoods (and Sugarhouse). But a short time later the media discovered that, before the licensing hearing occurred, Foxwoods had entered into an joint-venture agreement with MGM Mirage to develop casinos around the country with "first priority" to Atlantic City. In saying otherwise to the Board, did Foxwoods misrepresent things or mislead the Board? We think this bears investigation. Under the Gaming Act, "misrepresenting" or "misleading" the Board means you lose your license.

But more important, four civic groups who represent neighborhood surrounding Foxwoods think so too. Their lawyer filed papers with the Gaming Board to ask them to either revoke Foxwoods license or have the Board hold hearings. The Gaming Board returned those papers within hours without even docketing them. It certainly seems as if the Board doesn't want to touch this issue with a 10-foot pole.

But wait, Mr. Decker has taken a personal interest in this matter. In responding to a State Representative's inquiry, Mr. Decker sent a letter with his views on the matter. First, Mr. Decker says that the agreement with MGM was never in the record, so he never saw it. Then he says the agreement was a "non-binding" agreement (it was not). Then he attaches a letter from both Foxwoods and MGM that he apparently did accept.

Why is the Board being so careful not to look into this matter officially? And why are casino companies writing letters to Mr. Decker, that he then pawns off on a State Representative?

Why is Mr. Decker accepting a letter from MGM Mirage but not the papers submitted by four civic associations? Certainly MGM Mirage is not party to the proceedings. Or is it?

Mr. Decker Condemns the Referendum

In March 2007 the City of Philadelphia decided to put a referendum on the May 15th ballot asking the people of Philadelphia whether they want casinos within 1,500 feet of houses, places of worship, schools and playgrounds. This is entirely legal under the Gaming Act. It will also just happen to be an expression of the public's will about gaming, the first opportunity in the Commonwealth.

As soon as City Council voted to put the referendum on the ballot, Mr. Decker started to attack the public's right to vote. "It's clearly a violation of the gaming act," Decker told reporters after the board's public meeting in Harrisburg. "They're not allowed to pass it." <http://www.guardian.co.uk/worldlatest/story/0,-6485117,00.html>

Then on April 5, 2007, Tad Decker went ballistic, in our humble opinion. He had his Gaming Board file a suit in the Pennsylvania Supreme Court seeking to knock the referendum off the ballot. Hundreds of thousands of Philadelphians want the opportunity to voice their opinions on the question of whether massive slot parlors should be located within walking distance of residential neighborhoods. The day after the lawsuit was filed, Decker explained why he did it: "We cannot sit idly by and must take this action now because placing this question on the ballot is a waste of time" http://www.pgcb.state.pa.us/press/pr_040607.htm Waste of time Mr. Decker? We'll all be voting on many candidates for office when we're in the voting booth. There will be many other referendums on the ballot for us to read. Is it such a waste of time for us to push one more button? We're willing to spend a few seconds on democracy; why won't you?

Mr. Decker is supposed to be an impartial regulatory, whose duty is owed to the citizens of Pennsylvania. He is not supposed to carry water for the industry. The Governor's office is mindful of the state budget and it would be understandable (although a shame) if someone from the Governor's office would criticize the referendum. A state senator's office (even under the cloud of an indictment) would also be a likely place from which to lob criticism of the referendum. But such political sparring, let alone bullying, should not come from the Chairman of the Gaming Control Board. Let the casinos sue if they want to – the have enough money. But why is Mr. Decker attacking the referendum? What is so afraid of letting the public voice their opinion? And where does Mr. Decker come off telling the elected members of City Council what they can and cannot do?

In making these outrageous statements, he has gone beyond his authority and demonstrates a bias for the casino industry. He has acted against the good of the public and has made himself and the Gaming Control Board into protectors of profit and an enemy of democracy. In our opinion, Mr. Decker is out of control and he ought to resign or be removed.

Questions for Mr. Decker:

When and under what circumstances did he first learn about the Cozen firm representing Sugarhouse?

Why did you accept a letter from MGM Mirage and not papers submitted by four community groups surrounding Foxwoods?

If you are so sure the referendum is invalid, what's so wrong with letting people cast a vote?

The Law

According to Section § 1201(B.1)(1) of the Gaming Act: REMOVAL.-- A member of the board shall be removed from office by the appointing authority for misconduct in office, willful neglect of duty or conduct evidencing unfitness for office or incompetence.

According to Section § 1201(h)(15) of the Gaming Act: *If a member, employee or independent contractor of the board violates any provision of this section, the appointing authority or the board may, upon notice and hearing, remove the person from the board, withdraw the appointment or terminate the employment or contract, and the person shall*

be ineligible for future appointment, employment or contract with the board and for approval of a license or permit under this part for a period of two years thereafter.

According to Section 1202.1(c) of the Gaming Act:

A member of the board shall:

(3) Disclose and disqualify himself from any proceeding in which the member's objectivity, impartiality, integrity or independence of judgment may be reasonably questioned due to the member's relationship or association with a party connected to any proceeding or a person appearing before the board.

(7) Not meet or engage in discussions with any applicant, person licensed under this part or a licensed entity representative unless the meeting or discussion occurs on the business premises of the board and is recorded in a log maintained for this purpose. The log shall be available for public inspection during the regular business hours of the board. The provisions of this paragraph shall not apply to meetings of the board to consider matters requiring the physical inspection of the equipment or premises of an applicant or a licensed entity at their location.

(8) *Avoid impropriety and the appearance of impropriety at all times and observe standards and conduct that promote public confidence in the oversight of gaming.*

(e) DEFINITIONS.-- As used in this section, the following words and phrases shall have the meanings given to them in this subsection: "Licensed entity representative." *A person acting on behalf of or representing the interest of any applicant,* licensee, permittee or registrant, *including an attorney,* agent or lobbyist, regarding any matter which may reasonably be expected to come before the board.

Section 3 of the Gaming Board's Ethics Policy: Conflicts of Interest: All Board members and employees shall avoid situations in which their personal interests, activities or financial affairs are, or are likely to be perceived as being, in conflict with the interests of the PGCB.