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April 16, 2012

Ms. Stuart Drown
Executive Director
Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95813

Re: Comments regarding shifting functions from California Gambling Control Commission to the Department of Justice, Bureau of Gambling Control

Dear Director Drown:

Thank for the invitation to provide my thoughts on the Governor's proposal to shift a few functions from the California Gambling Control Commission ("CGCC") to the Department of Justice's Bureau of Gambling Control ("BGC"). The comments I offer are my own and not on behalf of my past or present clients. They are based on my 25 years practicing law in California, the last ten of which have focused to a great degree on issues related to gambling and the Gambling Control Act ("GCA"). I have attached to this letter my Curriculum Vitae for you to get a sense of my background.

In your invitation you asked for my input on three specific questions:

1. Whether I support or oppose the plan?
2. What advantages and risks would need to be considered?
3. Does this reorganization plan position the state to operate more effectively and efficiently? If not, what additional action is needed?

Respectfully, the only way for me to answer these questions is to start with question No. 3 and work backwards. No one is opposed to more effective and efficient state agency operations and when two agencies are involved in regulating the same industry it makes sense to examine them to scrutinize for available efficiencies. But even before you get to that question, I think one must ask even more basic questions like "why do we have two agencies in the first place" and "what is the core competency of each agency". In other words, before proposing changes, one needs to ask "What is the problem that we want to solve?"

As an attorney who has represented card room owners, funding sources and Third Party Proposition Player Providers (“TPPP”), I have regular contact with both the CGCC and the BGC. There is a cultural difference between the BBC and CGCC. The BGC’s culture is derived from its core expertise—investigation, auditing and prosecution. The CGCC’s culture flows from its core expertise as an approval and control agency. The effective regulation of gambling requires both. These cultural differences, coupled with inadequacies in the existing structure of the GCA, create problems; problems that increase confusion and inefficiency between the agencies and for the regulated community. These problems inevitably lead to less efficiency, more bureaucratic slowdowns and interfere with the ability to protect the public’s health safety and welfare—the core goal of the GCA.

This proposed reorganization plan is not going to change the culture of either agency, nor should you try. One would hope, however, is that any reorganization would attempt to change structural problems in order to minimize the negative influence and consequence of the cultural differences that do exist.

The duties imposed on these agencies should naturally follow their respective core expertise. For example, the Bureau does and should continue to do investigations, background checks, auditing of financial transactions, and enforcement. The CGCC’s should continue to perform its statutorily mandated duties and should continue to be responsible for the receipt, review and processing of the day to day administrative matters necessary for a card room owner or third party proposition player owner to comply with the day in and day out compliance requirements of the GCA. It bears noting that not all stakeholders can afford a lawyer or a hired designated agent. It also bears noting that the GCA, while not particularly lengthy, is technical and complicated and can be a trap for the uninformed and the informed. The CGCC’s current role in, for example, sending out notification letters of applications due, reviewing applications for completeness, entering data into licensing system, and issuing registrations and/or temporary licenses when appropriate, review corporate paperwork, fits its core expertise and effectively serves the regulated community, particularly the smaller gambling establishments.

It is critical to maintain the segregation of the so-called administrative functions from the investigatory/enforcement/prosecutorial functions because requiring an applicant to obtain daily administrative approval from the enforcement agency can create awkward problems. For example, if the Bureau recommends the denial of licenses of a card room licensee, that process can drag on for several years. During the pendency of that administrative process, the licensee is still in business, still needs all sorts of administrative approvals such as game approvals, temporary work permits and contract approvals from the very agency seeking to put them out of business. It would be as if the District Attorney were, in addition to being responsible for prosecuting business crimes, also responsible for issuing the ongoing business permit necessary for a business to operate. It creates more uncertainty in the relationships necessary for the

efficient operation of the regulated businesses and casts a pall on daily decision. It would be preferable to continue to have these duties handled through the CGCC's core expertise.

Finally, let me add that while my practice does not currently involve tribal gaming and I cannot make detailed comments on the proposed change in tribal auditing functions, I would urge that this be considered carefully in light of the CGCC's existing authority and responsibility with regard to the Revenue Sharing Trust Fund and the Special Distribution Fund. Dealing with sovereign tribes is very different from dealing with a regulated industry.

With these thoughts in mind, I provide the following answer to your questions.

1. I do not support the portions of the plan that propose to shift receipt and processing of the licenses, permits and articles of incorporation approvals from the CGCC to the BGC because these functions are inconsistent with the core expertise of the BGC and thus will only exacerbate the structural problems that presently exist.
2. If CGCC core functions are shifted to the BGC, then it is critical to carefully define the full scope of those shifting functions so as to avoid confusion, inefficiency and the turf battles that occur when two agencies compete for functionality. For example, the proposal to amend Bus. & Prof. Code § 19826(a) refers to the processing of applications. What does "process" mean? The proposal to amend Bus. & Prof. Code § 19881 shifts the review of articles of incorporation to the BGC. Does this mean the CGCC still review stock purchase agreements, share transfers and relocations?

With respect to the other proposed changes, in my opinion they are not substantive and change nothing. The BGC has always done investigations and ex parte communications have always been barred during the pendency of applications.

Summarily, the proposed reorganization, while relatively minor, goes in the wrong direction. It has the potential to exacerbate the existing structural problems that beg for a more fulsome and thoughtful approach.

It would not be fair to criticize without offering an alternative. Briefly, my proposed laundry list of reform would include:

1. Maintain and/or move all administrative processing (third party proposition player registrations, game approvals, third party proposition player contract approval for example) to the CGCC. Maintain license investigations, enforcement and prosecutorial functions with the BGC.
2. Maintain review of corporate documents, purchase contracts, share transfers and relocations at the CGCC as these fall squarely within the CGCC's core expertise.

3. Move the review of local gaming ordinance amendments to CGCC.
4. Provide authority for the BGC to enter into consent decrees (pre-accusation stipulated settlements) with subsequent CGCC approval.
4. Amend the GCA to require the BGC to:
 - a. Submit all evidence supporting a license denial or other disciplinary action recommendation to the CGCC with the service of the recommendation of denial/investigatory report and at least 45 days prior to the hearing on the matter. Currently the BGC need not provide all the reasons for its recommendations and may serve its recommendation shortly before the hearing on the licensee (the current response times can be as short as 3 business days). Because there is no assurance that the BGC has provided the CGCC with all relevant information, and often inadequate time for the licensee to respond to the substance of the BGC's proposed denial as well as for the CGCC staff to review all the information in order to prepare a staff recommendation, the CGCC and/or the licensee resorts to the Administrative Hearings process at the outset before there is a vote on whether to issue or deny the license.
 - b. Require that evidence supporting a proposed denial and sought to be introduced after the initial submission supporting a proposed denial be limited to new alleged violations or to evidence that could not have been reasonably discovered prior to submission of the original denial recommendation. This would ensure due process for the licensee/applicant, reduce uncertainty as to the completeness of existing recommendation and help minimize the unnecessary referral to an administrative hearing or a re-scheduling of the matter.

Again, thank you for the opportunity to share my thoughts on this process. I will be available to answer any questions you might have.

Very truly yours,

Tracey Buck-Walsh
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