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September 8, 2010

Gregory C. Fajt, Chairman
Pennsylvania Gaming Control Board
303 Walnut Street
5th Floor, Verizon Tower
Harrisburg, Pennsylvania 17112

RE: Treasurer Rob McCord

Dear Chairman Fajt,

Since the original slots law was adopted much has been done to try to improve the public opinion and perception of the law, including the oversight by the Pennsylvania Gaming Control Board. Since you have been a member of the Board I truly believe that the Board has put forth their best effort – that is except for the situation regarding Treasurer Rob McCord.

As of this point I have to question why the situation regarding the participation of Treasurer McCord is still going forward without some type of amicable solution. At a time when the state is facing fiscal constraints it seems illogical to continue to fight this matter out in court and waste funds and time. From my reading of the statute it would seem logical and the intent of the General Assembly that the Treasurer should be able to participate in all board meetings, without limitation, as an ex officio member of the Board and that if he violates the law or regulations regarding his participation he would be subject to penalties. If the Board has concerns regarding the participation of the Treasurer I would appreciate hearing from the Board as to any legislative changes they feel would be appropriate to address their concerns and would work to see that they are considered as soon as possible.

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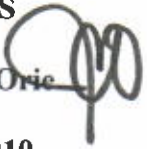
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CO-SPONSORSHIP MEMO #83

TO: ALL SENATORS

FROM: Senator Jane C. Orie 

DATE: September 22, 2010

RE: Reaffirming the Authority of the State Treasurer to Participate in Gaming Control Board Meetings

As you are probably aware, there is currently a dispute between the Pennsylvania Gaming Control Board and State Treasurer Robert M. McCord, regarding the Treasurer's participation as an ex officio, non-voting member of the Board.

This matter has come to a head with Treasurer McCord filing a lawsuit regarding his exclusion from the executive sessions of the Gaming Control Board. A hearing for oral arguments on preliminary objections, filed by both parties, was held last week before the full Commonwealth Court. (See Attached Article).

About two weeks ago I wrote the Gaming Control Board questioning why this situation has not been amicably solved and that it is my interpretation that the law is clear about the full participation of the Treasurer in all board activities. Furthermore, that this issue should be resolved as soon as possible because it is in the best interests of the public that the Treasurer fully participate and so that both parties will be able to focus their attention and financial resources, during these tight fiscal times, on their primary functions and responsibilities.

As of this point I plan on introducing legislation to amend the fiscal code reaffirming the authority of the State Treasurer to participate fully on any board, commission or agency to which he has been designated by law as a voting or non-voting member.

If you would like to join us as a co-sponsor of this legislation, please contact Kacie Morrell at 787-6538 or by email at kmorrell@pasen.gov.

Capitolwire: Panel of judges hears arguments on McCord lawsuit against Gaming Board.

By Jim Quirk
Staff Reporter
Capitolwire

HARRISBURG (Sept. 16) – Some Commonwealth Court judges seemed unconvinced by the Pennsylvania Gaming Control Board’s argument that Treasurer Rob McCord should be barred from board closed meetings.

Oral arguments on preliminary objections filed by both parties related to McCord’s lawsuit against the board were heard by a panel of seven statewide judges Thursday.

McCord filed the suit because the board will not allow him to attend executive sessions. The board believes the presence of an ex officio, non-voting member at closed meetings could compromise confidential information.

Also, because some casinos contributed to McCord’s campaign, the board believes his presence could give rise to allegations of corruption. The board said it is possible McCord could attempt to influence voting members during closed meetings because of politics.

Some judges challenged in oral argument the concept argued by the attorney representing the board that McCord – unlike board members – is an elected official who could be influenced because of politics and campaign contributions.

Judge Dan Pellegrini alluded to the fact that it is elected officials who appoint board members.

“Everybody is here through some form of politics,” he said.

James Kutz, the attorney representing the board, said Pellegrini’s “quarrel” on that should be with the General Assembly.

“No, my quarrel is with you,” Pellegrini responded.

Kutz argued that the gaming act states nothing about whether ex officio members should attend executive sessions.

Judge Mary Hannah Leavitt, however, pointed out the act also says nothing that would prohibit ex officio board members from attending closed meetings.

Earlier, Kutz pointed out that the act expressly states that the Sunshine Act shall govern the board. Leavitt asked whether the Sunshine Act included any reference to ex-officio members?

Kutz said the Sunshine Act states that an agency can hold executive sessions. He argued that an agency only includes voting members.

Leavitt, however, pointed out that there is nothing in the Sunshine Act that states ex officio, non-voting members are to be excluded from closed meetings.

Judge Patricia McCullough said the fact that McCord is an ex officio, non-voting member does not mean he is not supposed to speak or participate during meetings.

Pellegrini also pointed out potential benefits of having the treasurer attend a closed meeting. As an example, he said, if there were two different casinos vying for a particular gambling license, the treasurer might know whether the state could generate more tax revenues from one casino as opposed to another.

Pellegrini said since the law was intended to raise revenue for property tax cuts and other purposes, the state has a reason to maximize revenues, and the treasurer might help with those deliberations.

McCord's attorney, Chris Craig, who helped write the law as a Senate aide, told the panel the General Assembly was clear in writing the gaming act that the treasurer "shall serve as a non-voting member of the board."

When the proceeding concluded, Kutz was asked for his thoughts on how it went?

"I think it's in the hands of the court," he said.

Craig said after the proceeding the board "isn't a country club."

"This is an administrative agency, and the board would be well served by starting to act like one," he said.

Regarding Kutz's comments about the Sunshine Act, Craig said the act is "a public protection, not a public sword."

Craig also said he is unsure whether the court would require further oral arguments before ruling on whether McCord can participate in the closed-door meetings.

While this hearing was only on whether the court would throw out the lawsuit filed by McCord, Craig said the court could conceivably make its final decision on the whole lawsuit based on the legal documents filed so far and today's courtroom presentations.

NEWS RELEASE

State Senator Jane Clare Orie 40th SENATORIAL DISTRICT

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FOR IMMEDIATE RELEASE
September 22, 2010

Orie Calls for Legislation to Reaffirm Role of State Treasurer as Member of Pennsylvania Gaming Control Board – including Executive Sessions

As part of an effort to promote reform of the gaming industry and ensure accountability and transparency, Sen. Jane Orie (R-Allegheny) plans on introducing legislation to reaffirm the ability of State Treasurer Rob McCord to participate in PA Gaming Control Board meetings, including executive sessions, as a non-voting member.

McCord has been denied participation in gaming board meetings and has filed a brief as part of his lawsuit against the Pennsylvania Gaming Control Board for excluding him from closed meetings. McCord, who filed the lawsuit in May, believes state law permits him to attend board executive sessions. Orie agrees with that interpretation and sees no reason why the Treasurer should be excluded from such discussions.

In a letter to Gregory C. Fajt, Chairman of the Pennsylvania Gaming Control Board, Orie said “From my reading of the statute it would seem logical and the intent of the General Assembly that the Treasurer should be able to participate in all board meetings, without limitation, as an ex officio member of the Board and that if he violates the law or regulations regarding his participation he would be subject to penalties,” Orie said. “It is in the best interests of the public that the Treasurer fully participates as an ex officio member so that both parties will be able to focus their attention and financial resources, during these difficult economic times, on their primary functions and responsibilities.”

Orie, a staunch support of gaming reform measures, said it is crucial to provide oversight over this industry and to have supervision, which includes the State Treasurer. “If the Board has concerns and feels there needs to be legislative change, I am open to hearing their concerns and will introduce any necessary legislation – but excluding the Treasurer is the wrong message to be sending to the public.”

CONTACT: Mike Sarfert (717) 787-6538

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Gregory C. Fajt, Chairman
Pennsylvania Gaming Control Board
303 Walnut Street
5th Floor, Verizon Tower
Harrisburg, Pennsylvania 17112

RE: Costs Associated with Litigation - Treasurer Rob McCord vs. PGCB

Dear Chairman Fajt,

About two weeks ago I wrote you a letter regarding the situation regarding the participation of Treasurer Rob McCord in the board's executive sessions.

I understand that responding on this issue may be difficult due to the ongoing litigation. However, I am requesting a detailed breakdown of the board's anticipated costs associated with pursuing this matter. The breakdown should include, but not limited to: the process of hiring of outside counsel, their hourly rate, the number of outside attorneys assigned to the case, the hours for which the board has received invoices for payment, costs associated with filings and service, how much has the board estimated or has budgeted for defending this litigation and an estimate of the costs associated with board staff time to working on this case.

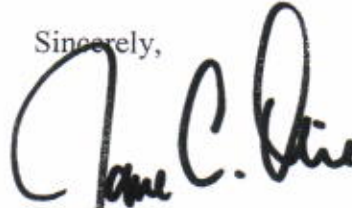
As I previously stated, I question why the situation regarding the participation of Treasurer McCord is still going forward without some type of amicable solution and at a time when the state is facing fiscal constraints it seems illogical to continue to fight this matter out in court. All state agencies need to be an example of fiscal constraint and pursuing this matter, including using outside counsel, is not a good example – whether or not the funds are taxes or fees passed along to the licensed entities.

September 22, 2010

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I would appreciate this information in a reasonable time, as it is a more limited request related to expenditures. Thank you for providing this information. If you have any questions please feel free to contact me.

Sincerely,



JANE C. ORIE
State Senator
40th Senatorial District

JCO/mas

CC: Commissioner Raymond S. Angeli
Commissioner Jeffrey W. Coy
Commissioner James B. Ginty
Commissioner Kenneth T. McCabe
Commissioner Gary A. Sojka
Commissioner Kenneth I. Trujillo
Senator Joseph B. Scarnati, III, Lt. Governor & President Pro Tempore
Senator Dominic Pileggi, Majority Leader
Senator Jane M. Earll, Chair, Senate Community, Economic &
Recreational Development Committee