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COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
GAMING OVERSIGHT COMMITTEE

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PUBLIC HEARING IN RE: CATEGORY 1 LICENSE TO CATEGORY 2  
LICENSE

\* \* \* \* \*

BEFORE: JOHN D. PAYNE, Majority Chairman  
NICK KOTIK, Minority Chairman  
Russ Diamond, George Dunbar, Kate Anne  
Klunk, Ryan Mackenzie, Kurt Masser, Eric  
Nelson, Tedd Nesbit, Jason Ortitay, David  
Parker, Ryan Warner, Sid Kavulich, Ed  
Neilson,  
Members

HEARING: Wednesday, September 21, 2016  
Commencing at 9:00 a.m.

LOCATION: B-31 Main Capitol Building  
Main Capitol Complex (Third Street)  
Harrisburg, PA 17101

WITNESSES: Fred Strathmeyer, Jr., Kevin O'Toole, Joe  
Thompson

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CHAIRMAN PAYNE: Good morning. I'd like to call the public hearing to order of the House Gaming Oversight Committee. Would you please stand for the Pledge of Allegiance?

PLEDGE OF ALLEGIANCE RECITED

CHAIRMAN PAYNE: Thank you. Roll call, please.

ROLL CALLER: Representative Payne?

CHAIRMAN PAYNE: Here.

ROLL CALLER: Brown's on leave. Diamond?

REPRESENTATIVE DIAMOND: Here.

ROLL CALLER: Dunbar?

REPRESENTATIVE DUNBAR: Here.

ROLL CALLER: Helm is on leave. Kaufer's on leave. Klunk?

REPRESENTATIVE KLUNK: Here.

ROLL CALLER: Mackenzie? Masser?

REPRESENTATIVE MASSER: Here.

ROLL CALLER: Miccarelli's on leave. Nelson?

REPRESENTATIVE NELSON: Here.

ROLL CALLER: Nesbit? Ortitay?

REPRESENTATIVE ORTITAY: Here.

ROLL CALLER: Parker?

REPRESENTATIVE PARKER: Here.

1           ROLL CALLER: Santora? Warner?

2           REPRESENTATIVE WARNER: Here.

3           ROLL CALLER: Representative Kotik?

4           CHAIRMAN KOTIK: Here.

5           ROLL CALLER: Bradford? Costa's on leave. Davis is  
6 on leave. Deasy's on leave. Flynn? Gainey? Kavulich? Kortz  
7 is on leave. Neilson?

8           REPRESENTATIVE NEILSON: Here.

9           ROLL CALLER: Rozzi?

10          CHAIRMAN PAYNE: Okay. Chairman Kotik, word,  
11 opening comments?

12          CHAIRMAN KOTIK: Let's go.

13          CHAIRMAN PAYNE: Let's go.

14          OFF RECORD DISCUSSION

15          CHAIRMAN PAYNE: A brief comment. It's the Chair's  
16 intent to have a hearing about the Lawrence County License, the  
17 Cat 1 License that --- the Gaming Control Board has, I believe,  
18 pulled that license now at last. And that's a license that's  
19 been at play since day one. I don't know how many years we've  
20 been back and forth with ownership in Lawrence County, but it  
21 feels like ever since I got here. And we'd like to get that.  
22 And I'm using my days in the Liquor Committee as a term.

23                 We'd like to get those licenses back to safekeeping  
24 to be reissued, but there are two licenses. There's the Gaming  
25 side and the horse racing side, and we need to have both Boards

1 or the Commission and the Board get those licenses back so  
2 they're available to be reissued. The Commonwealth and I  
3 believe the people of the Commonwealth both want to have that  
4 license available for revenue.

5 I mean, it's a \$50,000,000 fee for the license and  
6 we're losing the 54 percent on the slots, the 14 percent on the  
7 table games. It doesn't benefit the state. Now, I'm not going  
8 to speak on behalf of the casino owners. I'm sure there are  
9 some that would be thrilled if there was no more licenses, but  
10 the reality is from the state's perspective, we're not getting  
11 any revenue.

12 So what do we have to do to speed that process up?  
13 And that's the intent of --- if we can't get the Category 1  
14 back, available to be issued, then let's look at eliminating  
15 the Category 1 and go to a Category 2. With that I'll turn it  
16 over to the Gaming Control Board. Thank you.

17 MR. O'TOOLE: Good morning, Chairman Payne, Chairman  
18 Kotik and members of the House Gaming Oversight Committee. It  
19 is a pleasure to be with you again. I'm Kevin O'Toole and I am  
20 the Executive Director of the Gaming Control Board. With me  
21 this morning is our Director of Racetrack Operations, Kevin  
22 Kyle, on my right and our Chief Counsel, Doug Sherman, on my  
23 left.

24 As you know, the Pennsylvania Race Horse Development  
25 and Gaming Act creates three distinct classifications of Slot

1 Machine Licenses, as well as the number of licenses allowed  
2 under each classification. So the Gaming Act currently  
3 authorizes seven Category 1 Licenses, five Category 2 Licenses  
4 and two Category 3 Licenses with a potential for a third  
5 Category 3 License available after July 2017.

6 I have included in my testimony a map of the current  
7 facilities. We currently have 12 operating casinos in the  
8 Commonwealth. As you look at the map you can see the  
9 geographical dispersion of the facilities. Because  
10 Pennsylvania is a regional gaming market this dispersion  
11 greatly benefits Pennsylvania and its gaming operators.

12 It is my understanding that today's public hearing  
13 is to discuss the potential of converting the seventh Category  
14 1 Slot Machine License to a new Category 2 Slot Machine  
15 License. Changing the mix of the Slot Machine Licenses  
16 initially authorized by the Gaming Act clearly falls under the  
17 legislative power of the General Assembly. It is interesting  
18 to note, however, that the General Assembly in 2004 gave  
19 limited authority to the Gaming Control Board to increase the  
20 number of Category 2 Licenses and decrease the number of  
21 Category 1 Licenses.

22 The exercise of this discretionary authority was  
23 indicated only if one or more of the Category 1 Licenses were  
24 not applied for within five years of the effective date of the  
25 Act. Because all Category 1 Licenses had been applied for this

1 condition never materialized, so the Board did not exercise the  
2 discretion permitted by Section 1307 of the Gaming Act.

3           With Section 1307 of the Gaming Act no longer  
4 applicable, the legislative responsibility of the Pennsylvania  
5 Gaming Control Board is and remains the regulation of all  
6 gambling activity at the licensed casinos in the Commonwealth.  
7 Each category of Slot Machine License operates under the ---  
8 basically the same regulatory framework, the same regulations,  
9 the same security and surveillance requirements. And each  
10 casino, regardless of category, submit internal controls, very  
11 comprehensive internal controls, for Board approval covering  
12 their respective operations.

13           So with respect to the discussion regarding the  
14 potential for converting the Category 1 Slot Machine License to  
15 a Category 2 Slot Machine License, I do have a few comments and  
16 observations that may assist the Committee in its consideration  
17 of this topic. First, a Category 1 Slot Machine Licensee must  
18 hold or be granted a Racing License by the Pennsylvania Horse  
19 Racing Commission prior to applying for a Category 1 Slot  
20 Machine License to operate a casino. That's the dual license  
21 that the Chairman referenced in his opening comments.

22           The Horse Racing Commission plays a very important  
23 role in this process. It reviews the Racing License  
24 application along with the entity and the key personnel of the  
25 entity seeking the Racing License. If more than one applicant

1 for a Racing License has approached the Horse Racing  
2 Commission, then they determine through their evaluation of the  
3 multiple applications who, in their view, is best suited and  
4 has the most chance of being a successful operation. And they  
5 award the Racing License.

6           So at that point in time, once an applicant obtains  
7 the Racing License, then they are permitted to apply to the  
8 Pennsylvania Gaming Control Board for the Category 1 Slot  
9 Machine License. At that point it's not competition in front  
10 of the Board. It's up to that Applicant for a Casino License  
11 to prove that they are suitable to hold a Category 1 License.  
12 And the location for that project is already determined. It's  
13 determined either through a competitive process or through a  
14 sole op application in front of the Horse Racing Commission.

15           So a determination of suitability by the Gaming  
16 Control Board requires a conclusion that there is sufficient  
17 and reliable financing for the proposed project. This brings  
18 to the forefront the importance of the financial markets. From  
19 a competitive perspective, obtaining financing for a project is  
20 generally easier when the project has very few constraints. A  
21 Category 2 project has fewer constraints than a Category 1  
22 project simply because it does not include building a horse  
23 racing track or the attendant obligations of required race days  
24 and maintenance.

25           This could affect the ability to obtain financing



1 for a first rate facility. From the perspective of the  
2 Category 2 project there are mileage restrictions, how far they  
3 need to be from Category 1 properties or other Category 2  
4 properties. And in an attachment I've listed those mileage  
5 restrictions for your information.

6           It is also important to note that the General  
7 Assembly in 2004 very clearly stated that this new legislation  
8 authorizing casino gambling was intended to provide benefits to  
9 the horse racing industry and to, I quote, promote horse  
10 breeding and improve the living and working conditions of  
11 personnel who work and reside in and around the stable and back  
12 side areas of the race tracks, end of quote. And that quote  
13 comes from Section 11024, the legislative intent provision of  
14 the Gaming Act.

15           So how do they accomplish that legislative intent?  
16 Well, obviously through gaming taxes. Gaming taxes from the  
17 slot machine revenue is used to accomplish those goals. And  
18 the taxes include an allocation distributed to the Pennsylvania  
19 Race Horse Development Fund. The calculation of this tax is  
20 based upon the slot machine revenue at the Category 1 casinos.

21           Once the tax is calculated then all operating  
22 casinos pay a certain portion of that tax and the tax burden  
23 for the PRHDF does not lie solely on the Category 1s. It is  
24 allocated to all the operating casinos. Accordingly there  
25 would be a benefit to that fund from a seventh Category 1

1 License holder. Similarly, if the General Assembly authorized  
2 a sixth Category 2 Slot Machine License that could result,  
3 depending on location, in a decrease in the funds earmarked to  
4 the Pennsylvania Race Horse Development Fund if revenue were to  
5 be negatively affected in a small way or a moderate way by a  
6 new Category 2.

7           So to reiterate, what I'd like to close on is what  
8 our responsibilities are. So from a regulatory standpoint  
9 there's no substantive difference relative to the gaming floor  
10 or the offering of slot machines or table games between a  
11 Category 1 and a Category 2. Each category of Slot Machine  
12 License operates under that regulatory framework. The only  
13 fundamental difference between the Category 1 License and the  
14 Category 2 License is the requirement that a Category 1  
15 Licensee offer horse racing.

16           Thank you for the opportunity to testify. Kevin  
17 Kyle, Doug Sherman and I would be happy to answer any questions  
18 that you may have.

19           CHAIRMAN PAYNE: Thank you. For the record I want  
20 to note that the Pennsylvania Department of Ag has submitted  
21 written testimony, Fred Strathmeyer, Deputy Secretary. It is  
22 in your packet. And I'd also before we take questions, like to  
23 just make a comment since this may or may not be the last time  
24 I publicly get to see the Gaming Board members.

25           But you have been the most outstanding, professional

1 Board to work with, agree or disagree on some topics that we've  
2 done. You've always provided very upfront, forthright answers,  
3 suggestions. As we move forward on all those things through  
4 2015 and 2016 --- we're well over 50 meetings and hearings now.  
5 We moved the first Omnis Gaming Bill out of the House since  
6 2010, and I would argue, probably since the very beginning  
7 because it was so comprehensive. And we could not have done  
8 that without your guidance and feedback. Because a lot of  
9 times I would come up with these ideas, and I'll smile and say  
10 ideas, and you guys would kind of say, oh, yeah, we can do  
11 that, but. And I really appreciate that.

12           So on behalf of the entire Committee, we want to  
13 thank you for the excellent work you do in the Commonwealth of  
14 Pennsylvania, and for being such a great Board to come and talk  
15 to, a great resource. With that, questions? We go to  
16 Representative Diamond first.

17           REPRESENTATIVE DIAMOND: Thank you, Mr. Chairman.  
18 And thank you, Mr. O'Toole, for your testimony. I'm kind of  
19 looking at this and I sit on the Agricultural Committee, too,  
20 so I'm very sensitive to that side of it. And as I'm looking  
21 at this I'm looking at it as if we are the Board of Directors  
22 of a corporation and we're sitting on an unused asset. And we  
23 want to use that asset as soon as possible.

24           So aside from what you described as, --- which is  
25 not under your purview. The ability for someone to actually be

1 approved by the Racing Commission to have a racetrack, aside  
2 from that difference, is there any timeline difference, any  
3 complicating differences between awarding a Category 1 License  
4 and a Category 2 License for the Gaming Board?

5 MR. O'TOOLE: Well, there could be, but in either  
6 context the decision of the Gaming Control Board could be  
7 subject to judicial review and oftentimes is. And that  
8 elongates the process, but in terms of our responsibility to  
9 conduct thorough background investigations of the entities that  
10 are associated with the project and the key --- the ownership  
11 interests of that project, we follow the same process to do  
12 that.

13 The time commitment or the time allocation is  
14 usually in the hands of the applicant. If sometimes there are  
15 moving parts and oftentimes there is not good, firm, committed  
16 financial resources to fund the project and that --- without  
17 that there's generally delays.

18 REPRESENTATIVE DIAMOND: And can you just best case  
19 scenario us regardless of the category of license, how long  
20 would it take, best case scenario, to award a license once an  
21 applicant has shown up at the door and said, hey, we're looking  
22 at this license? Best case scenario.

23 MR. O'TOOLE: Best case scenario from our  
24 experiences would be that from the time we get the application  
25 the Board, hopefully, would be in a position to render a

1 decision within 9 to 12 months. But on a Category 2 that could  
2 be a highly competitive process, and in a highly competitive  
3 process we need to have public input hearings. And they could  
4 be multiple hearings and they could be in different locations,  
5 so that can elongate that process and make it closer to 15 to  
6 18 months.

7           But once the award of that license is made, if it's  
8 in a competitive process, Category 2s always have been, then  
9 there's generally a request for judicial review with the  
10 Pennsylvania Supreme Court. And we don't have any role in how  
11 long that takes. We've seen it take, you know, maybe slightly  
12 less than a year and we've seen it take considerably longer  
13 than a year just under judicial review.

14           REPRESENTATIVE DIAMOND: Okay. Thank you so much.  
15 That's very helpful. Thank you, Mr. Chairman.

16           CHAIRMAN PAYNE: Good job. Let me read into the  
17 record that Representatives Mackenzie, Nesbit and Kavulich have  
18 since joined the hearing since we've started. And I should  
19 apologize to the Board for not telling you in advance. I just  
20 got to thinking of something when Representative Diamond  
21 started asking questions about the timeline. Between the three  
22 of you, can you roughly give me the timeline on how long we've  
23 been in Lawrence County? I mean, I think we could've --- never  
24 mind. We could've done a lot, but we've been there a long  
25 time.

1           MR. SHERMAN: We've been there probably about eight  
2 years at this point.

3           CHAIRMAN PAYNE: And the number of changes, and  
4 owners and ---.

5           MR. SHERMAN: We started off, you know, with the  
6 original group. Then there was Centaur Gaming involved. They  
7 went through a bankruptcy. The project was sold out of  
8 bankruptcy. Then we ended up with the American Harness Tracks.  
9 Some changes of ownership there, which then ended up  
10 transitioning into Endeka. And then even with Endeka, they had  
11 different financial backers and owners that kind of moved in,  
12 moved out, you know. And ultimately, as we know, were not able  
13 to get the project to the finish line.

14           CHAIRMAN PAYNE: I think that's important for a lot  
15 of the members of the Committee who weren't even here eight  
16 years ago, to understand that this thing has been going on  
17 forever. And I have been frustrated since 2015 of just saying,  
18 look, if we can't make this happen, let's pull it back. Let's  
19 go somewhere else. Let's do something. Because I want to  
20 reiterate, from a Commonwealth standpoint it behooves us to  
21 have the casino and the track open and running if we can do  
22 that somewhere and generate revenue for the Commonwealth of  
23 Pennsylvania. Representative Neilson?

24           REPRESENTATIVE NEILSON: Thank you, Mr. Chairman.  
25 Thank you, gentlemen. In your testimony you spoke about how,

1 depending upon placement, we can hurt the Race Horse  
2 Development Fund. Is there some kind of --- and then within  
3 the legislation itself that we're talking about today, it talks  
4 about miles apart and stuff like that. Should we increase that  
5 mileage?

6           Because that's probably something we don't want to  
7 hurt, I mean, because that's something that gets attacked every  
8 year during budget. The legislature --- for some reason we  
9 just grab money out of that and ---. But that's something that  
10 we don't want to further hurt.

11           MR. O'TOOLE: Well, Representative, you know,  
12 mileage in a vacuum, it doesn't mean anything. Okay? What the  
13 Act was very successful at doing is parsing out locations. You  
14 know, two casinos in the city of the first class and one in the  
15 city of the second class. So we have our properties in good  
16 population-based areas. That's what is important, so in a high  
17 population, high density area you don't need 50 miles  
18 separation.

19           You know, 10 miles is what the rule is in the  
20 Philadelphia area between Cat 1s and Cat 2s, and that seems to  
21 work fine because we have multiple successful operations in  
22 southeastern Pennsylvania. So it's not just a figure. It's a  
23 little bit more --- you know, more complex in terms of ---.

24           REPRESENTATIVE NEILSON: And mathematical, yeah.

25           MR. O'TOOLE: Yeah. Yeah. And, you know, I mean,

1 there's ---.

2 REPRESENTATIVE NEILSON: What alarmed me is you said  
3 depending upon location it will decrease the funds.

4 MR. O'TOOLE: Well, I'm saying  
5 it's ---.

6 REPRESENTATIVE NEILSON: That sentence there, ---

7 MR. O'TOOLE: Yeah.

8 REPRESENTATIVE NEILSON: --- that just ---. I'm  
9 sure we're going to hear from Mr. Thompson. I see him on a  
10 list to testify next and maybe he'll have a little more on it.  
11 Because that's one of those things we don't want to get hurt  
12 and ---.

13 MR. O'TOOLE: Well, there's in state and out of  
14 state competition that is a force on all of the operating  
15 casinos, and they do a very good job in Pennsylvania. We've  
16 continued to maintain very strong revenue figures in the face  
17 of that competition. So it's worth considering location for a  
18 --- you know, if you go with a new Category 2 it's certainly  
19 --- location is a very important factor. And I can assure you  
20 that the Board considers that.

21 REPRESENTATIVE NEILSON: And that's one of those  
22 factors that you --- the Board will take in consideration upon  
23 approving them then?

24 MR. O'TOOLE: Absolutely.

25 REPRESENTATIVE NEILSON: So nothing we have to



1 legislate within?

2 MR. O'TOOLE: I don't believe so, no.

3 REPRESENTATIVE NEILSON: Thank you. The other  
4 question is you talked about how Category 2 is more  
5 competitive. If we put this license out just like it is, I  
6 mean, do you think we'll have responsible bidders come for it?

7 MR. O'TOOLE: Well, yes, I think we would have  
8 responsible bidders come forth. Yes.

9 REPRESENTATIVE NEILSON: All right. So no matter  
10 what category we put it out at, even if we leave it as is,  
11 they'll come?

12 MR. O'TOOLE: Yes.

13 REPRESENTATIVE NEILSON: Thank you, Mr. Chairman. I  
14 have nothing further. Thank you.

15 CHAIRMAN PAYNE: Thank you. Representative Dunbar?

16 REPRESENTATIVE DUNBAR: Thank you, Mr. Chairman.  
17 Just for all the members' edification, if you can give us a  
18 little bit on timeline. Your denial for --- because the  
19 Chairman was talking about the denial, how long we've been  
20 dealing with this. Was that just recently?

21 MR. SHERMAN: That was the end of last month. The  
22 30-day appeal period for Endeka, I believe, runs on the 28th,  
23 so next week.

24 REPRESENTATIVE DUNBAR: Because that was the next  
25 question. Are all their appeals exhausted? They still have

1 time?

2 MR. SHERMAN: They still have until the 28th of this  
3 month to file an appeal.

4 REPRESENTATIVE DUNBAR: And are you expecting any  
5 appeal or are you expecting that's done?

6 MR. SHERMAN: I would hope it's done. If history  
7 has shown anything, you know, we can never anticipate what  
8 might happen.

9 REPRESENTATIVE DUNBAR: Okay. So that's the casino  
10 license?

11 MR. SHERMAN: Correct.

12 REPRESENTATIVE DUNBAR: And there's still the --- to  
13 deal with the horse license, which would come through the new  
14 Commission; is that correct?

15 MR. SHERMAN: That's correct.

16 REPRESENTATIVE DUNBAR: And I don't --- for the life  
17 of me, I can't even tell you if that's even been paneled yet or  
18 ---. So that would also have to be denied as well for it to  
19 even be a Cat 1?

20 MR. SHERMAN: That's a question, I think, better fit  
21 for the Commission. It was our understanding they had  
22 conditions on the license of Endeka that in order to retain  
23 that license, they had to get the license from us. Now, that's  
24 been denied. I'm not certain whether it happens automatically,  
25 that it's deemed revoked or whether the Commission actually has

1 to take an action.

2 REPRESENTATIVE DUNBAR: Okay. Thank you.

3 CHAIRMAN PAYNE: Just for the public record, the  
4 Commission was invited to attend this hearing, and they opted  
5 not to attend and to send written testimony. We'll give them  
6 one more shot yet and hopefully they'll attend prior to the  
7 press conference that we'll hold. Representative Klunk?

8 REPRESENTATIVE KLUNK: Thank you, Mr. Chairman. And  
9 it's a little bit of a piggyback question on Representative  
10 Dunbar. And maybe you can't answer because the Racing  
11 Commission isn't here, but long term. So let's just say  
12 hypothetically, fingers crossed --- because this has been a  
13 long process and we want to get this license moving. Let's  
14 just say they don't --- Endeika doesn't appeal come the end of  
15 this month. What happens next?

16 And can you walk us through a hypothetical situation  
17 of --- say, that there is a group right now who is interested  
18 in this license. What would be the process moving forward once  
19 the 28th day appeal process tolls and how you see this moving  
20 forward? How soon potentially if people get their, you know,  
21 ducks in a row on the outside from an interested party, and the  
22 Racing Commission meets and you guys have all of the  
23 information that you need on your end? How soon can we get  
24 this license out onto the market, get things moving and get  
25 money coming into the Commonwealth?

1           MR. SHERMAN: And you're presuming by that, that it  
2 would remain a Category 1 License?

3           REPRESENTATIVE KLUNK: Exactly.

4           MR. SHERMAN: The Commission would announce that it  
5 was accepting applications for the Harness Racing License that  
6 was available. The timeline there really depends on whether  
7 there is one applicant or if there are more than one applicant.  
8 One, they would start through the process, do the vetting. I  
9 could or could not have intervenors that come in to oppose.

10                   That is one of the existing Category 1 or Category 2  
11 Licensees that takes a position that another horse track would  
12 be somehow disadvantage --- would disadvantage their operation.  
13 They would seek to intervene and really, that's an issue of  
14 either trying to get the Commission to not award the license or  
15 preserving Appellate rights later on. If there are two  
16 applicants for that one available Harness License then the  
17 Commission has to go through a longer competitive process, much  
18 like we do with the Category 2 Licenses.

19                   Ultimately the Commission awards a license. There  
20 may or may not be an appeal. And in that case their appeals, I  
21 believe, go to Commonwealth Court, go through the process in  
22 Commonwealth Court with possible further review to the  
23 Pennsylvania Supreme Court. Once that litigation would be  
24 complete, if there is, in fact, litigation, then whoever is  
25 awarded that license has the right to apply for a Category 1

1 Slot Machine License with us.

2           Again, there could or could not be intervenors in  
3 that process trying to oppose the grant of a Slot Machine  
4 License to that entity. Ultimately, once the Board were to  
5 award the license there again would be a right of appeal, but  
6 that would go directly to the Supreme Court. So while I'd like  
7 to say that a Category 1 process could be done in a timely  
8 manner, history shows that with the appeals and the competitive  
9 nature of the casino industry in the Commonwealth, there likely  
10 would be a series of appeals, which could probably drag this  
11 two, three, four years before our Board ever got to issue that  
12 license.

13           REPRESENTATIVE KLUNK: Thank you, Mr. Chairman, for  
14 that question. If I may, one quick follow up? Thank you. It  
15 is my understanding that the Endeka license for the one that  
16 we're talking about now was a standard bred license, harness  
17 --- or harness track.

18           MR. SHERMAN: Harness track.

19           REPRESENTATIVE KLUNK: Is that correct?

20           MR. SHERMAN: Yes.

21           REPRESENTATIVE KLUNK: Now, with, you know, the  
22 appeal process and this coming back to the Racing Commission  
23 and to the Gaming Control Board now for relicensure, would that  
24 still have to remain a harness track? Would that be up to the  
25 Racing Commission to determine that or could it be switched to

1 a thoroughbred track? How does that work? And you might not  
2 be able to speak to that. Thank you.

3 MR. KYLE: Are we on? It would have to remain a  
4 harness Racing License though. It would take action from the  
5 General Assembly to change it to a Thoroughbred License.

6 REPRESENTATIVE KLUNK: Thank you very much.

7 MR. KYLE: Uh-huh (yes).

8 CHAIRMAN PAYNE: Just to be clear, the harness ---  
9 well, the Gaming License has until the 28th for appeal, but at  
10 least we're trying to bring it back. The Commission hasn't met  
11 yet though to pull that license out of Lawrence County; has it?

12 MR. SHERMAN: That's correct.

13 CHAIRMAN PAYNE: So I want to be clear that there's  
14 no license available on the horse side to be obtained or bid on  
15 yet. And that's one of the reasons we're trying to do this, is  
16 to stimulate the Commission to take the same action that the  
17 Gaming Board's doing to bring that license back in so it can be  
18 bid on by somebody else. Because I'm certainly aware of at  
19 least two groups that would bid on this license if it was  
20 available, but it's currently not available.

21 REPRESENTATIVE DUNBAR: Three.

22 CHAIRMAN PAYNE: Three Dunbar just said.

23 REPRESENTATIVE DUNBAR: Yeah, Eric's going to lend  
24 me \$50,000,000.

25 CHAIRMAN PAYNE: Then if Eric's lending you \$50,

1 then there might be four groups. Representative Neilson.

2 REPRESENTATIVE NEILSON: Five, Mr. Chairman. We're  
3 talking about timeline and we're saying, okay, four years, four  
4 years, eight years. How long did it take to get the second  
5 license in the city of the first class up and running? I just  
6 want to make sure everybody knows timeline, I mean, because  
7 we're talking if we do this today, we're four or five --- we're  
8 years out.

9 MR. SHERMAN: Right. Yeah, the second license in  
10 Philadelphia, of course, is still tied up in litigation. There  
11 hasn't been a shovel in the ground yet to begin construction.  
12 The briefing on the second round of appeals from that --- the  
13 grant of the license to Stadium Casino Investors is scheduled  
14 to occur over the next two months. After which then it'll get  
15 to the Supreme Court in terms of either they can decide it on  
16 the briefs or schedule argument. So we're still a little bit  
17 out from that decision being final.

18 Then once it's final then the \$50,000,000 for the  
19 license fee would be paid and construction could commence. I  
20 believe Stadium Casino Investors has indicated about a total 18  
21 month construction period. So we're still looking some time  
22 out until revenues began in terms of the gaming revenues from  
23 that project.

24 REPRESENTATIVE NEILSON: And a follow up. You  
25 brought something up. We don't get the \$50,000,000, okay, the

1 fee until it's a done deal; correct?

2 MR. SHERMAN: Until the license is final and  
3 unappealable.

4 REPRESENTATIVE NEILSON: All right. Thank you.  
5 Thank you, sir.

6 CHAIRMAN PAYNE: Yeah. And I'll close just to  
7 follow up on that. I think what the Representative is also  
8 trying to find out, how long has it been from the point that  
9 you actually awarded it and now it's been on appeal? We're in  
10 year two, year three?

11 MR. SHERMAN: I think it's been a good two years,  
12 probably a little bit more.

13 CHAIRMAN PAYNE: It might be year three and we  
14 probably have another year to go, the Supreme Court hears the  
15 thing. So we're four years in. I think that's something that  
16 our colleagues in the House don't understand or appreciate yet.  
17 That if you went and awarded this license today, it's not  
18 happening for three, four years. And depending on the appeals  
19 --- that's why I'm so frustrated with the Lawrence County  
20 thing.

21 We've been at this for eight years. At some point  
22 you stick a fork in it. It's dead there at that location.  
23 Let's make it available and try again or, you know, we'll  
24 listen to the casino owners that want to --- there's a few that  
25 want to say, we don't want any more licenses. And, you know, I



1 think that's something the Commonwealth has to look at on  
2 whether or not we actually have saturated the market.

3           And two more or three more would actually bring our  
4 revenues down or whether or not --- since New York's building  
5 more and Maryland's building more and New Jersey's building  
6 more, that maybe there is room within this Commonwealth to stay  
7 competitive. I've always been --- from day one I've preached we  
8 need to do everything we can to keep our casinos competitive.

9           Because if we don't, five years, ten years from now  
10 we potentially could look like Atlantic City because they just  
11 sat there and they never took Pennsylvania seriously as a  
12 competitor. They do now. Thank you very much for your  
13 testimony.

14           REPRESENTATIVE NEILSON: And that was the --- Mr.  
15 Chairman, if I can real quick?

16           CHAIRMAN PAYNE: No, we're moving on.

17           REPRESENTATIVE NEILSON: On the same thing because  
18 this license ---.

19           CHAIRMAN PAYNE: Representative, with all due  
20 respect, all due respect, you've asked double questions. I've  
21 got to be done by ten o'clock. We have another group to  
22 testify. Please.

23           REPRESENTATIVE NEILSON: Yes, sir.

24           CHAIRMAN PAYNE: Please. Thank you, brother. Joe  
25 Thompson, President, Standardbred Breeders Association?

1           MR. THOMPSON: Is it on? Okay.

2           CHAIRMAN PAYNE: All yours.

3           MR. THOMPSON: All mine? Okay. My name is Joe  
4 Thompson. I'm President of the Standardbred Breeders  
5 Association of Pennsylvania, SBAP. And I'd like to thank you  
6 all for the opportunity to testify. I guess it's been a long  
7 time.

8                       We as standardbred owners and --- have been really  
9 frustrated with this Lawrence County thing because he said it  
10 was eight years. I know that the license was applied for in  
11 2001, so it has been a long time for just getting a license.  
12 Now, whether it's economics, or whether it's politics or what  
13 have you, it did not happen. And so we are frustrated from  
14 that fact.

15                      The Pennsylvania Breeders Association made up of  
16 about 500 families. We are all across the state. We're  
17 independent. We put a lot of money into it. Some put a little  
18 bit of money into it, some put a lot of money into it, but it  
19 is a process when you breed a horse that it's kind of like the  
20 commodity business. You know, they find a commodity that can  
21 sell for a lot of money today, and so everybody goes out and  
22 builds or tries to develop a mine or something.

23                      With us it's when the prices are good we try to  
24 breed more horses and --- but it's a process that takes like  
25 three, four years. So if you have selected the wrong stallion,

1 you have selected the wrong state, you have selected the wrong  
2 program to breed your horses around so the buyers will come in  
3 and buy them, it is ---. You could be tortured by that. And  
4 so bad publicity --- when you don't have positive vibes about a  
5 business or about, especially about this business, it can cause  
6 it to not do what you want it to do, and that's the growth that  
7 you're looking for.

8           So we go forward and what's good about the horse  
9 business compared to --- the horse industry compared to just  
10 having a casino and a Class 1 Type License is that not only do  
11 you have the ability to have the casino, but you also have the  
12 ability to have racing there, which increases the number of  
13 jobs and also ---. Well, there'll be jobs. And the  
14 trickle-down effect for the farmers and people who are  
15 supporting the horse business are affected by it as well. So  
16 you kind of have a double edged sword there for what you're  
17 trying to do.

18           So there's plenty of casinos out there and there's  
19 plenty of money with casinos. And they have more money than us  
20 poor little standardbred owners, but ---. So anyway, we  
21 appreciate the fact that we can make our appeal here.

22           Now, if you go back to 2004, Act 71 was passed just  
23 for that purpose, for --- Legislators saw that the horse  
24 industry was in trouble. They needed to do something to  
25 attract breeders. They needed to do something to help with

1 agriculture and as a result of that, it has done well. And if  
2 you look at what's going on, it has been very good for us as  
3 far as the progress that we've had over that time.

4           Now, one of the things you've got to remember  
5 though, too, is that we ran into a recession in 2008. And  
6 there's probably not anybody in here that wasn't affected by  
7 it, or if you had stocks or what have you. Stocks went down 50  
8 percent. Our market kind of follows. The people that buy  
9 horses, a lot of times are invested in the stock market as  
10 well. So that downward spiral from the stock market affected  
11 the prices. So that's been a little bit of a problem.

12           And I've been involved with the Standardbred  
13 Association in Pennsylvania for about --- I think I've been  
14 President for the last four or five years. But the amount of  
15 purses during that period has gone from about --- I think it's  
16 gone from about \$115 or so million dollars to \$100,000,000 just  
17 for standardbreds. And so there's an equal amount for  
18 thoroughbreds, but it has gone down and that's  
19 really ---.

20           I wish we had something that was permanent that  
21 would say that these are going to be the purses. This is going  
22 to be the Race Horse Development Fund, but it seems like --- no  
23 offense to politicians or what's going on in Harrisburg, but  
24 they sort of use it as an ATM machine. When there's more money  
25 that's needed, they come in and take money out of it. And they

1 use it and we ---.

2           Every year I thought that once you got this thing  
3 settled, that it's settled and we can run our business. And we  
4 go out and grow our business, and do what's right for the  
5 industry and so forth and get it going. But that seems to be  
6 something that comes up every year, so that's something we  
7 probably would like to address.

8           The other thing is that if you just think --- I  
9 mean, there's a lot of comments in here and facts on how well  
10 we've done in Pennsylvania. And I won't bore you with reading  
11 --- going through and reading them, but, you know, it is a big  
12 business. There's a lot of money involved with the horse  
13 industry, but more importantly it's the support industries that  
14 really pay for the horses, which is a big thing.

15           So, again, getting back to that, do you put a  
16 racetrack with a casino? Well, Act 71 said that's what it was  
17 for. It wasn't really about bringing in more gaming into  
18 Pennsylvania. It was about providing revenue, a source of  
19 revenue, that we could develop this industry. So the casinos  
20 really rode in on the back of the horsemen and that's how that  
21 thing got passed.

22           Because, you know, open space --- how do you support  
23 open space. How do you support farms? Farmers are  
24 disappearing. I'm sure you all have heard that, but the old  
25 --- I think the average farmer in the United States is like 58

1 years of age. He's getting older. So how do we get more money  
2 into that piece of it? And horses are a big part of the  
3 agriculture in the State of Pennsylvania, so that's where we're  
4 coming from.

5           The other thing I'd like to say is that Pennsylvania  
6 really is the --- you know, in Kentucky ---. In thoroughbreds,  
7 Kentucky is the Mecca, if you would. In Pennsylvania it's all  
8 about standardbreds. We have one of the biggest and best farms  
9 in the world located right here in Pennsylvania with Hanover  
10 Shoe Farms. They have about 1,200 different animals --- I  
11 mean, horses.

12           And they have about 85, 90 people that work for  
13 them, and they supply some of the best horses in the country.  
14 Well, we earn every year and last year they had like  
15 \$29,000,000 that their horses had won racing in North America.  
16 The next breeder was like \$22,000,000 or \$23,000,000 and then  
17 it really drops off. So in order for them to survive you  
18 really have to figure out how you can get more money available  
19 for people who will come into Pennsylvania and want to buy  
20 Pennsylvania-bred horses, and that's what they do. So that's a  
21 big deal.

22           As far as the total amount of land dedicated, you  
23 know, there's over 1,000,000 acres and so forth. And, again, I  
24 don't want to go through and read all this stuff for you  
25 because you've seen it. But the other thing is the first week

1 in November we will have one of the biggest sales in the  
2 country for standardbred race horses. Standardbred race horses  
3 and standardbred yearlings.

4           What happens is, as a breeder what we do is we  
5 obviously breed the mare. The foal's born the following year  
6 and then we sell them the next year. So that is what's going  
7 on. About half of that money --- there's about \$50,000,000  
8 that will trade at the standardbred sale. And about half of it  
9 comes from yearlings. And about half of it comes from older  
10 age mares, and breeding stock and that kind of thing.

11           So that's going to happen the first weekend in  
12 November. And in order to make that attractive, what you can't  
13 do is what we did last year. Somebody threatened to shut down  
14 the racetracks right before the races --- right before the  
15 sale, which really hurt everything. But what we need is we  
16 need positive vibes about our industry in the State of  
17 Pennsylvania rather than having negative things come out before  
18 the sale or negative things that --- we're cutting back on  
19 racing. We're taking standardbred licenses and turning them  
20 into casino licenses, those are not positive things.

21           So, you know, if you get a person that wants to be  
22 in the business, can afford to be in the business, is willing  
23 to go out and buy things then he has to look two or three years  
24 down the road for being able to make a profit from what he's  
25 going to try to do. And like I say, the horse business takes

1 longer than most other businesses because you have to breed.  
2 And you're two or three years from selling it and sometimes  
3 they don't get in foal, which is another thing.

4           Interesting enough, a couple years ago I talked  
5 about Pennsylvania breds. And the average Pennsylvania bred  
6 sold to somebody out of state. Sold for almost twice as much  
7 as the Pennsylvania bred that was restricted to --- that was  
8 just sold to a Pennsylvania resident. So Pennsylvania-bred  
9 horse, who's going to bid on it? Pennsylvanians were willing  
10 to pay only about half as much as the people from out of state.  
11 So that's what we want to do.

12           If you had to restrict it to just Pennsylvania  
13 people, then you limit your market completely. But if you can  
14 provide the opportunity for them to race for a lot of money,  
15 then people like Hanover --- people that have the farms here  
16 ---. I have like 60 mares that I have that reside in  
17 Pennsylvania to meet the program. They will allow us to be  
18 able to operate, cover our costs and hopefully make a profit.  
19 So, anyway, that's coming up.

20           You know how valuable the Pennsylvania complex is  
21 over there, so that's where it's going to be. And I think the  
22 horse business is about the third oldest of being able to do  
23 there. But, anyway, in finishing up. We've had a lot of  
24 hurdles in this Class 1 License in Lawrence County and we  
25 obviously want to protect it. We want to protect that license.



1 And this time rather than have so many casinos attached to the  
2 racetrack, let's hope or try to place it with people in the  
3 industry that have --- that put the horses out front as trying  
4 to develop the business.

5           Generally speaking, what happens is when the casino  
6 has a racetrack, they put it at a time when it doesn't  
7 interfere with their casino business. So what we'd like to do  
8 is really have horse people involved so that they know what's  
9 appealing to people who would come to that Class 1 facility.  
10 We've been in Lawrence County for a while. You know, it's  
11 already been talked about how much --- how long it's been, but  
12 it would seem that maybe in that time period the location  
13 probably is not what it was in 2002 or '03 when they started it  
14 up. So maybe a different location with different people  
15 involved would be in order in order to make that a successful  
16 venture.

17           So, anyway, that kind of concludes what I'd like to  
18 do, but I would just want to encourage you to --- for the idea  
19 of switching from a Class 1 to a Class 2 may be expedient, may  
20 be good, may appeal to a lot of people, but we need this Class  
21 1 License that was issued to standardbreds. We need to abide  
22 by Act 71, which was put in place in order to stimulate the  
23 business. And now that the recession's over, now we need to  
24 get a lot of positive things happening in our industry so that  
25 we can grow it to what it ought to be.

1           CHAIRMAN PAYNE: Thank you. Chairman Kotik?

2           CHAIRMAN KOTIK: Thank you, Mr. Chairman. Thank you  
3 for your testimony, Mr. Thompson. I've been doing a lot of  
4 thinking lately about this whole situation with this Category 1  
5 License. And I'm beginning to believe that we're getting  
6 oversaturated here in Pennsylvania, that we just have too much.  
7 And I have a couple questions for you. My first question is,  
8 if you build a facility in your part of the --- in the central  
9 part of the state without the casino, could the facility  
10 survive?

11           MR. THOMPSON: Probably not. The reason it wouldn't  
12 survive is because it has to be in competition with those that  
13 have that, ---

14           CHAIRMAN KOTIK: Yeah.

15           MR. THOMPSON: --- that have the supplement coming  
16 from the purses. In fact, Ohio's a good example. Ohio was a  
17 state that had no gaming, no slots, nothing. And, you know,  
18 they --- as far as the amount of money paid for the horses,  
19 very low and mostly fair racing. And this past couple of years  
20 they got slots and now all the sudden, they are the leading  
21 state for horses bred in that state. There's like 2,500 mares  
22 bred in Ohio and there's like 2,000 bred here.

23           CHAIRMAN KOTIK: Would you say as far as in today's  
24 world --- you know, I can remember growing up when you got a  
25 lot of attendance before we had casinos in Pennsylvania. You

1 got a lot of attendance at racetracks. I don't see the  
2 attendance, myself, at racetracks today, to actually go and  
3 patronize. The younger groups and younger people today are not  
4 like the old timers that went to the racetracks and spent their  
5 time playing all the horses. I just don't see it. I don't see  
6 the attendance at these facilities anymore.

7 MR. THOMPSON: Two comments. One is television's  
8 replaced a lot of that, so people that are busy, work every  
9 day, they can watch racing from anywhere in North America on  
10 their television at night and switch from station to station.  
11 They can bet on it. We have betting right here in Pennsylvania  
12 through Parx and through a number of places where you can bet  
13 on those horses and sit right on your couch and do that. So as  
14 far as taking an hour and a half, two hour drive to get to the  
15 facility, it does --- you don't need to do that.

16 As far as what I've been --- what I'm trying to say  
17 though is that we need to put ---. When we have this Class 1  
18 License, we need to have the people that know how to promote  
19 harness racing be in charge of it rather than people that know  
20 how to promote slots. Don't say the slots are bad because they  
21 certainly produce a lot of revenue for everything, but we need  
22 to --- and we need to have a shining example that's growing our  
23 business back.

24 And the ones that we have out there right now, in my  
25 opinion, are more casino oriented than they are horse oriented.

1           CHAIRMAN KOTIK: But don't you believe also that if  
2 you build this facility with the racing facility and also the  
3 casino facility, that the casino may not do as well as other  
4 --- because you've got this oversaturation? You've got all  
5 these states around us. Everybody's building casinos  
6 everywhere you look around, so there's no guarantee that your  
7 facility, with the racing and the casino, will be a success if  
8 you're facing increased competition from everywhere. That we  
9 may be just getting to this oversaturation that I see in  
10 Pennsylvania.

11           We just have too much gambling going on and there's  
12 a limited universe as to where --- how many gamblers there are  
13 in this Commonwealth. They're going to subsidize the casinos,  
14 which you're hoping that will help to subsidize your industry  
15 as far as revenue and helping provide more revenue. So I think  
16 we have to be careful about when we think about all the  
17 dimensions of this, and just don't look at it from one --- only  
18 one perspective.

19           MR. THOMPSON: But one of the things, if you can  
20 place it in a --- well, first of all, you've got to look at  
21 Pennsylvania. Pennsylvania is the hallmark for standardbred  
22 racing in the country and breeding. So if you could place that  
23 racetrack where --- in the heart of where that happens and  
24 maybe it ---. Maybe you're right. Maybe there is a saturation  
25 on the casinos.

1           But if you can start to supplement and start to  
2 drive the racing industry along with the other ---. Maybe you  
3 don't have to have a giant amount of revenue coming into that  
4 casino. Maybe it can be made to make --- be a little bit  
5 smaller. Maybe it doesn't have to be as big and wonderful, you  
6 know, spelling billions of dollars on it. But make it so that  
7 it works for people, and works and is a profitable enterprise  
8 in that area.

9           CHAIRMAN PAYNE: Yeah. And if I could add, Nick. I  
10 mean, the Committee's already talked about the fact that it's  
11 thought to be a number of suitors that would be interested in  
12 that license as a Category 1. If they're going to spend  
13 \$50,000,000 and build the track, they have a pretty good sense  
14 that they're going to be able to make money.

15           CHAIRMAN KOTIK: But they're going to want to make  
16 their money from the casino, too. That's going to be --- I  
17 would imagine the profits from the casino will be much bigger  
18 than the profits from the industry, from the horse racing  
19 aspect of it. That's where the profits will be made.

20           CHAIRMAN PAYNE: For our profits from the casinos  
21 ---.

22           CHAIRMAN KOTIK: Yeah. The job creation is the  
23 reverse though, so that you'll still make your money from the  
24 casino versus where you're going to make money from the actual  
25 operation of the horse facility.

1           CHAIRMAN PAYNE:  Yep.

2           CHAIRMAN KOTIK:  Thank you, Mr. Chair.

3           CHAIRMAN PAYNE:  Any other members of the Committee  
4 have questions?  Yeah, sure.  Dunbar?

5           REPRESENTATIVE DUNBAR:  Just a quick follow up on  
6 what Chairman Kotik had asked, when he had spoken about not  
7 seeing many people at the racetracks.  And you had mentioned  
8 about a lot of individuals can sit at home and bet.  Do you  
9 know off the top of your head what our total parimutuel handle  
10 is in Pennsylvania?  Has it gone up or down recently?

11          MR. THOMPSON:  Looking at the number it wouldn't be  
12 --- probably wouldn't be right.  I know North America, we race  
13 for about a ---.  The standardbreds race for about  
14 \$500,000,000, so ---.

15          REPRESENTATIVE DUNBAR:  Yeah.  But do you know if  
16 our handle has gone up or down?  Do you know which way it's  
17 trending?

18          MR. THOMPSON:  I would prefer not --- I don't know.  
19 I'd give you bad information.  We'll get it for you though.

20          REPRESENTATIVE DUNBAR:  Thank you.

21          CHAIRMAN PAYNE:  Yeah, I'd ask that you get that  
22 information and give it to the Committee.  Representative  
23 Neilson really wanted to ask a bunch of questions, but he had  
24 to leave.  I know one question that he was driving at when the  
25 Board was there was, it hasn't been eight years on this

1 license. And you mentioned in your testimony, in '01 we  
2 started a process.

3           Was the delay from '01 or '04 when the legislation  
4 was actually formed until somebody --- that's where we got the  
5 eight years. A license, somebody applied or what's the  
6 difference? Because that's going to come up. And use the  
7 microphone so we've got you on tape.

8           MR. THOMPSON: I think the difference --- I think if  
9 I remember correctly, it was like December of 2001 is when they  
10 applied for the first Racing License. Now, my opinion would be  
11 that would be in anticipation of Act 71, so that's probably why  
12 it drug out. But I think it was a financing issue for the  
13 plant and then as the time --- as time went on I think that,  
14 you know, people ---. In Ohio they built a racetrack over near  
15 Cleveland.

16           So it probably had a better population draw being  
17 there. So as time's gone --- as time has gone on, I think it's  
18 more financial than anything else. I don't think you can say  
19 it was because it's a standardbred license.

20           I think they wanted to put --- you know, what we've  
21 always wanted is we want a mile track in the State of  
22 Pennsylvania. They were going to put a mile track, so you had  
23 standardbred people that would gun behind it. But I think the  
24 financing and so forth --- and then when Ohio started to come  
25 forward, then I think people started to back off and it became

1 a financing issue.

2           Then it became --- a lot of guys are saying what the  
3 Chairman said, was that it makes a whole lot more sense if we  
4 buy it to put it in just casinos and we'll move the license.  
5 But we would hope that you wouldn't change the license and we  
6 can put it in a place that is in the heart of standardbred ---  
7 raising and racing standardbreds.

8           CHAIRMAN PAYNE: We appreciate that.

9           CHAIRMAN KOTIK: Yeah.

10          CHAIRMAN PAYNE: Go ahead.

11          REPRESENTATIVE DIAMOND: We have a written timeline  
12 that I can share with you that you can get to the Committee  
13 members that's very recent information.

14          REPRESENTATIVE DIAMOND: Absolutely. Thank you very  
15 much.

16          CHAIRMAN KOTIK: Thank you very much.

17          REPRESENTATIVE DIAMOND: This is probably the last  
18 chance I'll get to appear before the Chairmen, both of you  
19 officially. And so I just want to wish you well on leaving the  
20 legislature, whatever your future endeavors. We haven't worked  
21 on a ton of legislation together, but I can say that your  
22 leadership and your counsel will be sorely missed in the  
23 General Assembly.

24          CHAIRMAN PAYNE: Thank you. Thank you very kindly.

25 And that concludes today's hearing. This Committee hearing is



1 adjourned.

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HEARING CONCLUDED AT 9:55 A.M.

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## CERTIFICATE

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