

# LAW OFFICES OF PAUL BONI, P.C.

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Via Fax: (717) 214-9292 and Regular Mail

Cyrus Pitre, Esquire  
Chief Enforcement Counsel  
Bureau of Investigations and Enforcement  
Pennsylvania Gaming Control Board  
PO Box 69060  
Harrisburg, PA 17106-9060

December 29, 2008

Re: PGCB Docket #42824 (Application of HSP Gaming, L.P. for  
Additional Time to Make Slot Machines Available to Play)

Dear Mr. Pitre:

On behalf of my client, Casino-Free Philadelphia, we would like to bring to your attention the following matters relative to HSP's application for additional time to open its slots parlor along the Delaware River waterfront in the Philadelphia neighborhoods of Fishtown and Northern Liberties:

1. HSP's filing is improper and should be stricken

HSP's application should be stricken because it is an unverified application containing averments of fact not currently part of the record. The Board's regulations (58 Pa. Code § 493a.1.) do not allow for the filing of an unverified application; the regulations allow for the filing of Complaint or Petitions, both of which require verification by the party if the pleading contains averments of fact not appearing of record. 58 Pa. Code § 495a.5. This is important because verifications are made pursuant to 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities). Therefore, as a matter of law, the filing should be stricken.

Additionally, aside from this particular instance and its circumstances, good public policy requires that any request of this sort be submitted in proper form in a verified Petition. The public controversy, wholly unrelated to HSP, about the licensing of the Mt. Airy Resort & Casino provides an additional reason for all written averments of fact made by applicants or licensees to be verified.

In sum, the Board regulations and good public policy require that HSP's filing be stricken and that any such request for more time be made via a verified Petition. For these reasons, we request that the Bureau of Investigations and Enforcement (the "BIE") move to strike the filing submitted by HSP.



2. HSP should be required to demonstrate current financial suitability

Given the economic decline in general and the financial problems currently facing the gambling industry in particular, the Board should require HSP to update its showing of financial suitability. The Board should not extend an applicant's time for opening its facility unless the Board is satisfied that all of the information in the original application is still intact and otherwise up to date. Among the information contained in the original application are the financial fitness requirements regulated by Section 1313 of the Gaming Act. The Board should revisit whether those standards are still being met.

During the 2006 licensing process, the Board analyzed all applicants' financial suitability and fitness to construct the proposed facilities. As described in the Board's February 1, 2007 Adjudication, all applicants' finances were investigated by the Bureau of Investigations and Enforcement, the Bureau of Corporate Compliance & Internal Controls, which created a financial fitness report, and by a Financial Suitability Task Force that retained professional consultants and otherwise engaged in extensive document review.

Recently, new casino construction has ground to a halt in various places in Pennsylvania, in the northeast region and across the county. In Pennsylvania, the slots parlor proposed for Allegheny County lost its financing and had to be bailed out; the racino proposed for Lawrence County lost its financing and the project is on hold indefinitely. In Atlantic City, the construction of at least two new casinos is on hold due to lack of financing. Accordingly, it is reasonable to question whether the financing HSP had in place in 2006 still exists today. The Board should require this showing.

We believe a renewed showing is required by law. Section 1326 of the Act provides that any application for renewal "shall include an update of the information" contained in the initial application. Further, HSP's Statement of Conditions provide that HSP is to comply with the Act "at all times" (Paragraph 1); that HSP is to "ensure at all times" that the information in its application is "true and correct" (Paragraph 4); that HSP is to "ensure that at all times" that it "meet[s] and maintain[s]" the suitability requirements of the Act, including those related to "financial fitness" (paragraph 5); and, that HSP must notify the Board of any "material change in financial status" (paragraph 31).

In sum, we believe the BIE should request that HSP update its showing of financial suitability.

3. HSP should be required to demonstrate it can open by the requested new deadline

HSP requests an extension until January 10, 2010 but it provides no information to suggest it will be open by that time. HSP still needs a number of permits and approvals, including those identified in a July 8, 2008 letter written by Mayor Michael Nutter, a copy of which is attached hereto. In his letter, Mayor Nutter concludes that the obstacles to developing the SugarHouse casino at the proposed site are "practically



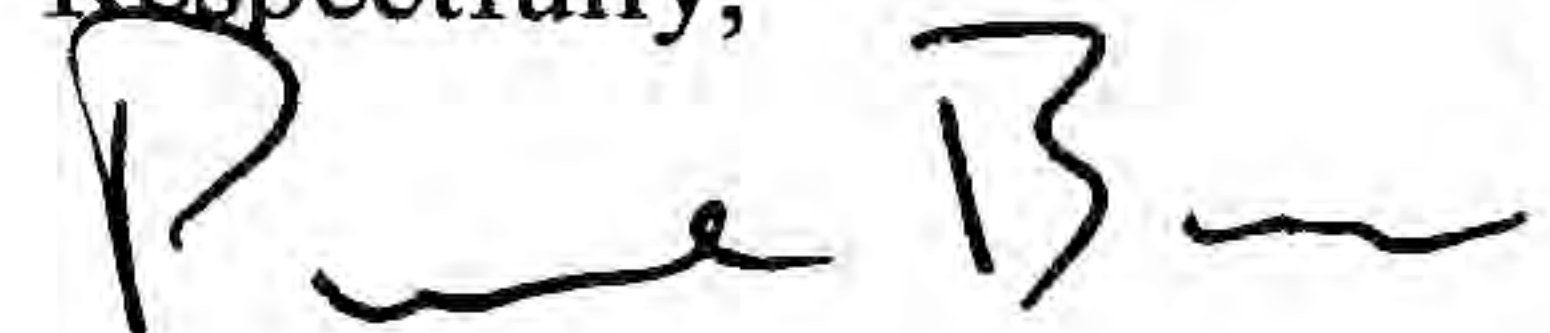
insurmountable.” Also, while HSP has disclosed to the Board, albeit in a footnote, that its sewer permit is being appealed, it provides no information to the Board about the substance of that appeal, the likelihood of success of that appeal or the time it would take for that appeal to be resolved fully and finally. Further, given the intense interest in the Army Corps permit, it is foreseeable that the Army Corps will deny HSP’s permit application or that, if a permit is issued, a third-party could challenge the permit in federal court. Finally, HSP should update its submittal to include mention of the Trump federal lawsuit and how that might affect HSP’s plans to develop its casino, including any impact Trump’s lawsuit might have on HSP’s financing.

Moreover, we note that at a July 3, 2008 press conference the Philadelphia Delegation (of state lawmakers) publicly stated its united opposition to HSP’s currently proposed site. Along with the press conference, Representative Dwight Evans and Senator Vincent Fumo wrote to the Governor and to Mayor Nutter explaining that the site is “no longer viable, and any future delays caused by continued attempts to embrace [it] will adversely impact the casino licensees’ and developers’ bottom line.” The legislator’s letter also stated the site is “untenable and contrary to the public interest.” We enclose a copy of a news article about the press conference and also a copy of the legislators’ letter.

In sum, HSP has not provided adequate information about whether it can open its facility by January 10, 2010. The BIE should request that the Board require much more information about the prospect of whether and when HSP can obtain the remaining permits and approvals. There is reason to question whether HSP can open its facility at this location anytime in 2010 or at all.

Thank you for considering these issues and points.

Respectfully,



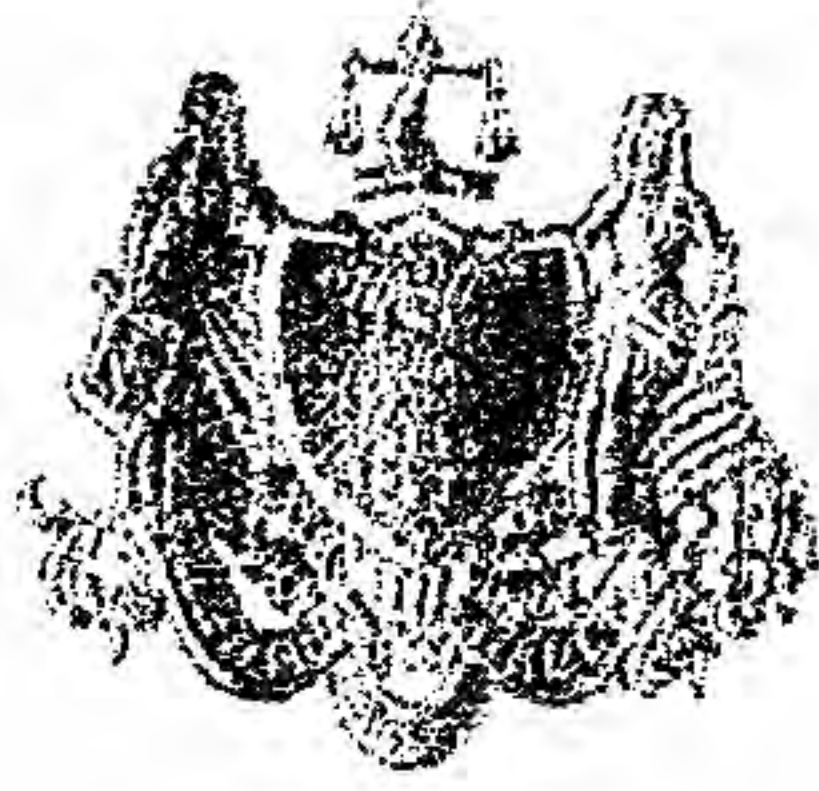
Paul Boni

Attorney for Casino-Free Philadelphia

Encl.

cc: Linda Lloyd, Office of Hearings and Appeal, (via fax: 717-265-7416)  
R. Doug Sherman, Esquire, Acting Chief Counsel (via email)  
Senator-Elect Lawrence Farnese (via email)  
Representative Michael O’Brien (via email)  
Mayor Michael Nutter (via email)  
Councilman Frank DiCicco (via email)





# CITY OF PHILADELPHIA

Office of the Mayor  
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Philadelphia, PA 19107  
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MICHAEL A. NUTTER  
Mayor

July 8, 2008

The Honorable Vincent Fumo  
Senator, 1<sup>st</sup> District  
Commonwealth of Pennsylvania  
Senate Box 203001  
Harrisburg, PA 17120-3001

The Honorable Dwight Evans  
Representative, 203rd District  
Commonwealth of Pennsylvania  
512 Main Capitol Building  
PO Box 202203  
Harrisburg, PA 17120-2203

Dear Senator Fumo and Representative Evans:

Thank you for your letter of July 3, 2008. Like you, I am not opposed to casino development in Philadelphia. I have, in fact, testified at a City Council hearing on April 4, 2008, and publicly stated this position. I fully expect that two casinos will be built in Philadelphia. As you have suggested, however, the present locations may indeed be so problematic as not to be viable. In the past few months, we have discovered a number of outstanding legal and regulatory issues that would have to be addressed before either Foxwoods or SugarHouse would be able to begin construction.

I want to make it clear that my staff has been in regular contact with representatives of both casinos since I came into office in January. We have been following the mandate of the Supreme Court, but have been mindful that the City – and the Commonwealth – maintain certain legal powers and responsibilities relating to water, sewer, streets, traffic, historic, environmental and other planning issues. For the last six months, we have worked with the casino representatives when possible to resolve the issues that can be resolved, while maintaining the City's position that neither of these sites is the best site for a casino project. Since June 19, 2008, when the City's Planning Commission notified Foxwoods that its zoning application was incomplete, representatives of the Planning Commission have begun to meet with representatives of Foxwoods to address the



Commission's concerns about the application's deficiencies. In just the last several days, our Streets Department has agreed to change the City map to reflect the installation of a sewer pipe for the Foxwoods development, as required by the development plan. Also, the Department of Licenses and Inspection has renewed the rough grading permit for the SugarHouse development, which expires today.

Notwithstanding these efforts, our discussions and exploration of the details relating to construction, permitting, and other related development issues have convinced us more than ever that these two sites are problematic and that at a minimum, the City and the casinos would be better served by relocating. The issues we have identified include the following:

#### Foxwoods

- Foxwoods, as appropriate sequentially, must submit complete plans for and obtain zoning, foundation and building permits from the Department of Licenses and Inspections before it can proceed with construction.
- Foxwoods has applied for but not yet received its Act 537 sewer permit from the Pennsylvania Department of Environmental Protection.
- Foxwoods must receive a Highway Occupancy Permit from PennDOT and the City before it can construct its facility. A number of complicated issues must be addressed before the issuance of this permit, according to PennDOT and the Streets Department. These include issues relating to traffic mitigation, including traffic ingress and egress patterns in adjacent properties and signal and lane changes in Columbus Boulevard, with potential infringement on required sidewalk dimensions.
- Foxwoods' physical plans, which are only 30 percent complete, must be completed before the City can award them a building permit.

#### SugarHouse

- SugarHouse, as appropriate sequentially, must apply for, submit complete plans for and obtain zoning, foundation and building permits from the Department of Licenses and Inspections before it can proceed with construction.
- SugarHouse has applied for but not yet received its Act 537 sewer permit from the Pennsylvania Department of Environmental Protection.
- SugarHouse is awaiting resolution of its riparian rights license appeal, which is pending in the Pennsylvania Supreme Court. This issue needs to be resolved before its development can proceed and, depending on the outcome, may require a substantial change in the development plan.



Senator Vincent Fumo  
Representative Dwight Evans  
July 8, 2008  
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- o The Pennsylvania Historic and Museum Commission is investigating archeological findings on the SugarHouse site; this issue needs to be resolved before it can proceed. There may be federal law issues here as well.
- o SugarHouse will need to receive a Highway Occupancy Permit from PennDOT and the City before it can construct its facility. There are significant issues relating to this, including SugarHouse's request to eliminate a portion of a major street near its site.
- o SugarHouse must receive approval of its environmental mitigation plan from the state, which may include acquiring a site for which it does not presently have rights and hosting a Public Information Meeting this summer.

Finally, before beginning construction, both casinos would need to obtain the approval of Air Management Services in the Health Department under AMS Regulation X, which requires consideration of air quality impact, not only of fixed equipment on the site but also traffic generated by the development.

For all these reasons, the obstacles to casino development at the present sites would seem to be practically insurmountable. Therefore, I look forward to working with you both to identify alternative sites that will protect the interests of all parties involved, including the casinos, the City and the residents of Philadelphia. As you know, on June 26, 2008, I asked PennPraxis to examine this issue, to answer the siting question and to explore alternative sites. I hope that working together we can identify sites that will allow for more efficient, less costly, and more legally supportable development that also comports with my Administration's unwavering dedication to judicious and beneficial development in Philadelphia.

Over the next few weeks, I look forward to discussing these issues in more detail with both of you, Governor Rendell and the representatives of the casinos as proposed in your letter. In addition, we should also be mindful of the great interest in these issues by members of Philadelphia's City Council and the neighborhood groups affected by the casinos. I would recommend that we ensure that these interested parties are kept apprised of our progress as these discussions continue.

Sincerely,



Michael A. Nutter  
Mayor



Senator Vincent Fumo  
Representative Dwight Evans  
July 8, 2008  
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cc: Governor Edward G. Rendell  
Senate President Pro Tempore, Joseph B. Scarnati, III  
Senate Majority Leader Dominic Pileggi  
Senate Minority Leader Robert J. Mellow  
Speaker of the House Dennis M. O'Brien  
House Majority Leader H. William DeWeese  
House Minority Leader Samuel H. Smith  
Senator Vincent J. Hughes  
Senator Shirley M. Kitchen  
Senator Michael J. Stack  
Senator Christine M. Tartaglione  
Senator Leanna M. Washington  
Senator Anthony H. Williams  
Representative Louise Williams Bishop  
Representative Thomas W. Blackwell  
Representative Mark B. Cohen  
Representative Angel Cruz  
Representative Lawrence H. Curry  
Representative Robert C. Donatucci  
Representative Harold James  
Representative Babette Josephs  
Representative William F. Keller  
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Representative Kathy Manderino  
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Representative John Myers  
Representative Michael H. O'Brien  
Representative Frank Louis Oliver  
Representative Cherelle L. Parker  
Representative Tony J. Payton, Jr.  
Representative John M. Perzel  
Representative James R. Roebuck, Jr.  
Representative John P. Sabatina, Jr.  
Representative John Taylor  
Representative W. Curtis Thomas  
Representative Ronald G. Waters  
Representative Jewell Williams  
Representative Rosita C. Youngblood  
Council President Anna C. Verna  
Councilwoman Jannie L. Blackwell  
Councilwoman Blondell Reynolds Brown  
Councilman Darrell L. Clarke  
Councilman Frank DiCicco  
Councilman W. Wilson Goode, Jr.  
Councilman William Green  
Councilman William K. Greenlee  
Councilman Curtis Jones, Jr.  
Councilman Jack Kelly  
Councilman James F. Kenney  
Councilwoman Joan L. Krajewski  
Councilwoman Donna Reed Miller  
Councilman Brian J. O'Neill  
Councilwoman Maria D. Quiñones-Sánchez  
Councilman Frank Rizzo  
Councilwoman Marian B. Tasco



## PLAN PHILLY

### Fumo, Evans push casino re-siting

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#### Fumo, Evans push casino re-siting



Foxwoods site



July 3

By Kellie Patrick Gates  
For PlanPhilly

On the eve of the fourth anniversary of legislation that brought casinos to Pennsylvania, Philadelphia's legislators had a message for Foxwoods and SugarHouse: Move willingly from the waterfront and we'll help you. Fight us, and we'll make you move.

Sen. Vince Fumo and Rep. Dwight Evans are leading the charge, but had many other members of the city's delegation with them when they announced a unified effort at a 9 p.m., July 3 press conference.

In a letter to Mayor Michael Nutter and Governor Ed Rendell, Fumo and Evans called for a casino relocation meeting with the mayor, the governor, the Philadelphia delegation and the principals of both Foxwoods and SugarHouse.

"The two proposed sites are no longer viable, and any future delays caused by continued attempts to embrace them will adversely impact the casino licensees' and developers' bottom line," Fumo and Evans wrote in their letter.

"We are willing to assist in finding new locations that will allow the commencement of gaming operations as soon as possible. As Pennsylvania officials who designed and approved the gaming act in an effort to provide tax relief, we have an interest in their success. We are dedicated, however, to making this new industry an asset to all of Philadelphia, rather than a detriment to the City's waterfront and the vibrant local neighborhoods in close proximity. We ask your help in setting up a meeting with the casino licensees at your earliest convenience so that we may begin this process in earnest."

At the press conference, Fumo said the entire Philadelphia delegation - including those who do not represent the riverfront neighborhoods - are now united in the fight against the currently proposed sites. From that unity comes new power in the on-going casino battle, he said. And, Fumo said, Rendell is now paying attention.

"While Foxwoods Casino Philadelphia remains committed to the site that was approved by the Pennsylvania Gaming Control Board and upheld by the Pennsylvania State Supreme Court, we would welcome a meeting to discuss and resolve this issue so that we can move forward in bringing jobs and tax revenues to the residents of Pennsylvania," said Foxwoods spokeswoman Maureen Garrity. "We are happy to meet with anyone at any time to discuss why our site is the best site and resiting is not an option," said SugarHouse spokeswoman Leigh Whitaker.

If the casinos don't cooperate willingly, the delegation will do what it can to force them. The delegation will ask the state gaming control board to revoke their licenses, he said. And it will pursue other legislative actions to force a move.

"We've been throwing spitballs," he said. "We will now start throwing atom bombs."

Under state gaming law, the casinos are to be open within one year of getting their operating licenses - that year is up in February for SugarHouse and in May for Foxwoods. This is when the delegation would petition the gaming control board so that the board would not take some action resulting in more time for the casinos.

So far, both Foxwoods and SugarHouse have pledged to stay put despite legal battles, residents' protests and the wishes of the riverfront legislators and Mayor Nutter.

And it would take more than just the Philadelphia delegation to pass any piece of legislation. But Rep. Mike O'Brien - who was at the press conference - said the Philadelphia team has enough members to persuade their counterparts across the state to vote with them.

Legislators and their constituents from other parts of the state don't care where the Philadelphia casinos are located, O'Brien said. They just want them to open so their revenues can provide tax relief. The quickest way for them to open, he said, is for them to move away from locations that have met much opposition.

"After the two year struggle against the current location of the casinos, today the logjam finally broke," O'Brien said. "There is now the political will to do this."

Contact the reporter at [kelliespatrick@gmail.com](mailto:kelliespatrick@gmail.com)

- [casinomove.doc](#)



**FOR IMMEDIATE RELEASE**

**CONTACT: GARY TUMA (Fumo)  
PHONE: 717-787-5662  
JOHNNA PRO (Evans)  
PHONE: 717-783-1540**

**FUMO, EVANS PLEDGE PHILADELPHIA CASINO RELOCATION EFFORT**

**HARRISBURG, July 3, 2008** – State Senator Vince Fumo and State Representative Dwight Evans have agreed to launch an effort to find new locations for Philadelphia's two casinos, both of which are now proposed along the Delaware River Waterfront.

They have written a joint letter to Governor Edward Rendell and Mayor Michael Nutter, requesting their assistance and cooperation. A copy of the letter is attached.

The proposed locations have both been met with significant community opposition, along with a variety of other problems.

###

**A copy of the letter follows:**

July 3, 2008

The Honorable Edward G. Rendell, Governor  
Room 238  
Main Capitol  
Harrisburg, PA 17120

The Honorable Michael Nutter  
Room 215  
City Hall  
Philadelphia, PA 19107

Dear Governor Rendell and Mayor Nutter,

The two of us met this evening and discussed the problems concerning the proposed locations of the two Philadelphia casinos, and the lack of progress made thus far toward bringing those projects to fruition. We have decided that it would be in the best interest of the City of Philadelphia, its residents, the taxpayers of the commonwealth, and the casinos themselves if they were to move to a new location. The existing locations are untenable and contrary to the public interest. Accordingly, we intend to pursue aggressively an effort to re-site the casinos away from the Delaware River Waterfront. We ask you to join our effort.



The prolonged controversy and legal battles over these locations have created costly delays and have resulted in repeated unproductive political disputes. They have caused great anxiety for residents in nearby neighborhoods who feel that their communities will be irreparably harmed if casinos are built where now planned. We are determined to change this course. Therefore, if we are unsuccessful in our new effort aimed at relocation, we jointly pledge to take other firm steps in the legislature, including but not limited to legislation that would remove tax breaks, which were under consideration this week, to ensure that this matter is resolved in a way that satisfies the public interest, rather than the interests of a few casino investors.

This endeavor has a greater chance of achieving these desired ends if the four of us work together. We hope you agree.

The two proposed sites are no longer viable, and any future delays caused by continued attempts to embrace them will adversely impact the casino licensees' and developers' bottom line. We are willing to assist in finding new locations that will allow the commencement of gaming operations as soon as possible. As Pennsylvania officials who designed and approved the gaming act in an effort to provide tax relief, we have an interest in their success. We are dedicated, however, to making this new industry an asset to all of Philadelphia, rather than a detriment to the City's waterfront and the vibrant local neighborhoods in close proximity.

We ask your help in setting up a meeting with the casino licensees at your earliest convenience so that we may begin this process in earnest.

Sincerely,

*(Signed)*  
DWIGHT EVANS

State Representative

*(Signed)*  
VINCENT J. FUMO

State Senator

A copy of this release is also available at [www.fumo.com](http://www.fumo.com), or by clicking on the following link:

[http://www.fumo.com/Press\\_Releases/CasinoReloFumoEvans7-3-08.htm](http://www.fumo.com/Press_Releases/CasinoReloFumoEvans7-3-08.htm)