

**[J-126-2007]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**

IN RE: DAUPHIN COUNTY FOURTH	:	No. 149 MM 2007
INVESTIGATING GRAND JURY	:	
	:	
PETITION OF: LOUIS A. DENAPLES	:	
AND MOUNT AIRY #1, LLC,	:	
	:	
	:	
	:	

**CONCURRING OPINION**

**MR. CHIEF JUSTICE CAPPY**

**DECIDED: December 10, 2007**

I reluctantly join in the result reached by the Majority, which concludes that the explicit language of Section 1517(d) of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. § 1101 *et seq.* (“the Act”), provides for county district attorneys to share concurrent authority with the Attorney General in investigating and prosecuting criminal violations of the Act. I write separately, however, to point out the perils that arise from such statutory edict, particularly the *carte blanche* self-elevation of the Dauphin County District Attorney as a super-prosecutor of purported gaming violations merely due to the geographical circumstance that he presides in the county in which the politically-charged gaming legislation was enacted. By subpoenaing documents relating to Petitioners’ gaming application and license, the District Attorney is attempting to unravel the extensive proceedings that have been conducted by the Pennsylvania Gaming Control Board after an exhaustive investigative and adjudicatory process and which were affirmed by this Court in Pocono Manor Investors, LP v. Gaming Control Board, 927 A.2d 209 (Pa. 2007). The Legislature surely could not have contemplated such a distorted application of Section 1517 of the Act.

A more prudent scheme would designate the Office of Attorney General as the sole prosecutorial body to *uniformly* enforce the comprehensive statutory scheme for gaming license approval. In my view, the General Assembly envisioned such an approach and merely intended for Section 1517 to afford local district attorneys the authority to carry out their traditional role of investigating and prosecuting crimes that may occur on the premises of a gaming facility. However, because my view is not supported by the Legislature's use of broad statutory language in Section 1517, I am constrained to join in the Majority's result.<sup>1</sup>

Madame Justice Baldwin joins this concurring opinion.

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<sup>1</sup> I am also deeply concerned by the Grand Jury leaks in this matter, which are obvious by simply reading the newspaper. This smacks of a personal quest of someone either seeking personal aggrandizement or a vendetta against a family or an ethnic group. Whatever the motive, it is intolerable that what goes on in a confidential grand jury is published the next day by the media.