

[J-65-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

SOCIETY HILL CIVIC ASSOCIATION,	:	No. 40 EM 2007
QUEEN VILLAGE NEIGHBORS	:	
ASSOCIATION, PENNSPORT CIVIC	:	Petition for Review from the Order of the
ASSOCIATION, WHITMAN COUNCIL,	:	Pennsylvania Gaming Control Board
INC., PAUL NEUWIRTH, RITA GAUDET	:	dated February 1, 2007 at Docket Nos.
DEVECCHIS, BARBARA SEIPLE AND	:	1356, 1364, 1367, 1751, and 1362
KATHELEEN MCGRANN,	:	
	:	Application to Lodge
Petitioners	:	
	:	Application for Summary Relief
	:	
v.	:	Request for Confidential Documents That
	:	Comprise the Record
THE PENNSYLVANIA GAMING	:	
CONTROL BOARD,	:	Application to Strike Portions of
	:	Reproduced Record
Respondent	:	
	:	
HSP GAMING, LP, INTERVENOR	:	
PHILADELPHIA ENTERTAINMENT AND	:	SUBMITTED: May 7, 2007
DEVELOPMENT PARTNERS, LP,	:	
	:	
Intervenor	:	
	:	
PINNACLE ENTERTAINMENT, INC. AND	:	
PNK (PA), LLC,	:	
	:	
Intervenor	:	

DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: June 4, 2007

I respectfully differ with the majority's conclusion that Section 702 of the Administrative Agency Law has no application in the present setting. See Majority Opinion, slip op. at 10. Rather, I agree with Petitioners' position that Section 702 and the other provisions of the associated subchapter apply, in the first instance, to all Commonwealth agencies. See 2 Pa.C.S. §701 (“[T]his subchapter shall apply to all Commonwealth agencies[.]”).¹ Section 1204 of the Gaming Act, which invests this Court with original and exclusive appellate jurisdiction relative to appeals pertaining to the issuance of gaming licenses, supplants only the contrary portion of Section 702 which provides for appeals to the court having jurisdiction pursuant to the Judicial Code, 42 Pa.C.S., Title 42. See 4 Pa.C.S. §1204. As Petitioners argue at length, nothing in Section 1204 of the Gaming Act displaces the provisions of Section 702 that establish the criteria by which standing to appeal from agency decisions is determined. See id.; accord Citizens Against Gambling Subsidies, Inc. v. Pennsylvania Gaming Control Bd., ___ Pa. ___, ___ n.2, 916 A.2d 624, 628 n.2 (2007) (explaining that the General Assembly's various references within the Gaming Act specifically superseding application of the Administrative Agency Law in discrete matters “suggest[] that [the Administrative Agency Law's] requirements may otherwise apply to other aspects of administrative proceedings under the Gaming Act where those requirements are not specifically overridden”).

I also agree with Petitioners that Section 1204's silence with regard to standing means that Section 702 applies, not merely by default, but also as a matter of positive legislative mandate under Section 106 of Title 2 of the Pennsylvania Consolidated Statutes (Administrative Law and Procedure), 2 Pa.C.S. §106 (“No subsequent statute

¹ In the context of the Administrative Agency Law, the term “Commonwealth agency” includes independent agencies. See 2 Pa.C.S. §101.

shall be held to supersede or modify the provisions of this title except to the extent that such statute shall do so expressly.”).² Again, as Petitioners stress, no language that would expressly supersede or modify Section 702’s formulation for standing to appeal an administrative agency determination appears within the Gaming Act.

Since I would hold that Section 702 applies, I would also apply the interpretation of Section 702 in Application of El Rancho Grande, Inc., 496 Pa. 496, 437 A.2d 1150 (1981), pursuant to which party (or intervenor) status was not required to support an administrative appeal by one possessed with a direct interest in the subject matter of the administrative proceeding. See id. at 502, 437 A.2d at 1153. Furthermore, in light of Petitioners’ allegations concerning their (or their members’) close geographic proximity to the gaming facilities benefiting from the challenged licenses, I believe they are, at the very least, entitled to a factual determination concerning whether such proximity invests them with a direct interest.³

² I recognize that Section 1201.1 of the Gaming Act, addressing the applicability of other statutes to the Gaming Control Board, does not specifically indicate that the Administrative Agency Law applies to the Board. See 4 Pa.C.S. §1201.1. However, while providing for the applicability of various enumerated statutes to the Board, this section is not phrased in exclusive terms. Therefore, I do not believe that it expressly supersedes the Administrative Agency Law as contemplated under section 106 of Title 2, 2 Pa.C.S. §106 (“No subsequent statute shall be held to supersede or modify the provisions of this title[, i.e., Administrative Law and Procedure,] except to the extent that such statute shall do so expressly.”), in order to warrant a departure.

³ The present circumstances are readily distinguishable from those prevailing in Citizens Against Gambling Subsidies. There, the petitioners did not preserve a claim of a direct interest in the subject matter of the administrative proceeding, but rather, asserted standing by virtue of more diffuse financial interests arising out of a petitioner’s status as a taxpayer and property owner in the county in which a gaming facility was to be located. See Citizens Against Gambling Subsidies, ___ Pa. at ___, 916 A.2d at 628.

As I am unable to support the dismissal of the appellate and original jurisdiction matters based on the reasoning embodied in the majority opinion, I respectfully dissent.

Mr. Justice Castille joins this dissenting opinion.