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Groups Challenge Decker On Timing of Knowledge

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An attorney for a cadre of neighborhood groups opposed to casinos in Philadelphia has submitted to the state's justices court papers that challenge Pennsylvania Gaming Control Board Chairman Thomas "Tad" Decker's assertions he didn't know until late last year that his former law firm performed legal work related to an ultimately successful bid for one of two city-based licenses.

Decker, a favorite target of the anticasineros crowd, strongly denies any allegation to that effect, and has begun telling local media he will sue anyone he believes has defamed him.

The recent episode highlights one of the frequent refrains of the fight over gaming in Pennsylvania.

Antigaming activists, neighborhood groups and, increasingly, supporters of disappointed license applicants tend to criticize not only the bias they feel was at play in the license-awarding process, but also the apparent lack of a proper means by which to raise their concerns in the court system.

Supporters of the Gaming Control Board say its members are being held to an impossible six-degrees-of-separation standard in a state where business, law and politics often intertwine. They dismiss the other side's bias charges as ad hominem insinuations that should be rejected out of hand.

Here's what the latest volley is all about.

On Dec. 20, 2006, the day of the board's vote on the Philadelphia licenses, Decker recused himself from voting on the license application concerning the proposed SugarHouse Casino in Fishtown, saying it had "recently" come to his attention that Cozen O'Connor had begun doing legal work related to the SugarHouse license application after Decker left that firm, where he had served as managing partner, to assume his \$150,000-a-year position with the board in the fall of 2004.

Gov. Edward G. Rendell had selected Decker, a personal friend, to lead the Gaming Control Board after Rendell's first pick, former Philadelphia Police Capt. Frank Friel, pulled his name from consideration when media began to focus on old stories about Friel's testifying in Connecticut on behalf of a boxing promoter with alleged mob ties.

In court papers submitted earlier this week in *Society Hill Civic Association v. Pennsylvania Gaming Control Board*, neighborhood groups attorney Larry Silver of Langsam Stevens & Silver in Philadelphia wrote that Decker's "recently" statement "appears very doubtful" and that the justices should inquire further about Decker's allegedly improper behavior.

Silver, whose practice focuses on environmental and zoning work, has had a bit of trouble actually getting his memorandum filed with the court. He submitted it to the court after the matter's May 7 briefs deadline; Silver said he didn't get his hands on key documents from the Gaming Control Board and Department of State until after that date.

Deputy Prothonotary John Person, who runs the Supreme Court's City Hall office, then returned the document to

Silver, saying it had been improperly filed under Pennsylvania Rule of Appellate Procedure 123, which governs applications for relief generally. Rule 2501 specifically addresses filings submitted after a case's main briefs have been entered into the record.

Silver said he has re-filed his document under Rule 2501. The new version was recorded on the docket as an official filing yesterday.

In interviews earlier this week, both Decker and Cozen O'Connor Chairman Stephen Cozen fervently dismissed the suggestion that Decker had to have somehow known earlier than December 2006 about the firm's SugarHouse-related work.

"It's troubling to me that people who give up great jobs to serve the public interest subject themselves to the wildest and most scurrilous types of accusations that are totally without any factual foundations," said Cozen, who is also one of several big-name appellate lawyers representing the SugarHouse group on an intervenor grant in *Society Hill*.

Decker said he's tired of reiterating that he recused himself from voting on the SugarHouse application and will consider legal action if he believes critics' comments go too far.

"If they have committed libel or slander against me, I'm going to sue them," Decker said.

Listed below are the points raised in the court papers by Silver on behalf of the anticasinos group:

Local real estate developer Daniel Keating holds a sizable ownership interest (1.63 percent, according to *The Legal's* analysis of Gaming Control Board records) in HSP Gaming LP, the corporate entity associated with the SugarHouse project. According to Silver's court papers, HSP's gaming license application lists Keating's business's Center City offices as its principal address and states that HSP was formed in December 2005 for the purposes of pursuing one of the two available city-based licenses.

Keating's companies have, for decades, been represented in litigations in a variety of local courts by attorney F. Warren "Fred" Jacoby, who in 1995 joined Cozen O'Connor, where he is currently vice chairman. In a recent interview, Cozen confirmed that Keating and his companies have been longtime and continuous clients of Jacoby's. Most recently, Jacoby has represented Keating Construction Co. in litigation stemming from the October 2003 parking-garage collapse at the Tropicana Casino in Atlantic City.

In April 2006, a nonprofit called the "SugarHouse Foundation Inc." was registered with the Pennsylvania Department of State. According to the SugarHouse Web site, the foundation was set up for the purpose of spending up to \$3 million annually on improving quality of life in the local community. Silver noted in his court papers that on the nonprofit's April 2006 incorporation papers, the foundation's address is listed as "c/o Cozen O'Connor, Attention: F. Warren Jacoby, Esquire."

On Nov. 13, 2006, Decker questioned an HSP representative during a suitability hearing concerning the SugarHouse application, Silver wrote, citing board transcripts.

On Dec. 15, 2006, Jacoby officially registered with the Gaming Control Board as an HSP representative, according to a copy of the registration form that Silver attached to his brief.

On Dec. 19, 2006, Decker questioned an HSP representative during closing arguments on the SugarHouse application, Silver wrote, again citing to board transcripts.

On Dec. 20, 2006, Decker recused himself from voting on the SugarHouse application. His fellow board members approved that application 6-0, Decker has stressed. Decker did vote on the license applications of SugarHouse's competitors, and the board's votes on those bids were effectively unanimous.

"The apparent and logical conclusion," Silver wrote, "is that Chairman Decker, who stated on Dec. 20, 2006, that he only 'recently' learned of Cozen O'Connor's representation of HSP, was fully aware of Mr. Jacoby's representation of HSP many months before his recusal, a representation that began no later than April 6, 2006, and probably many months before that. A factual hearing is needed to determine exactly when Mr. Jacoby and Cozen O'Connor began to represent HSP and when Chairman Decker knew it."

Silver went on to reason that the documents attached to his court papers "show at the very least an appearance of impropriety in Chairman Decker's conduct."

Decker told *The Legal* that some of his critics seem to believe that "I have to be all-knowing to all people."

"I'm not in the firm anymore, and I recused myself - what more could I have done?"

Decker said that Jacoby reported to him as managing partner before he left Cozen O'Connor and that he knew Jacoby had previously done work on behalf of Keating entities. But he said he didn't speak to Jacoby about Jacoby's involvement with HSP until some time in December 2006.

Decker said he can't recall exactly how he learned about his former firm's involvement with the SugarHouse application, but guessed that he might have learned about it after the firm or one of its attorneys filed an official document with the Gaming Control Board.

When Decker did speak to Jacoby about his former partner's work on behalf of HSP, according to Decker, Jacoby told him it concerned a financial transaction that likely wouldn't be reviewed by the board.

"I said, 'Somebody's going to have to let me know about this, because I might have to recuse,'" Decker recalled.

Decker said he discussed the situation with Frank Donaghue, the board's chief counsel. Decker said Donaghue advised him there was no need for him to recuse himself from participating in the vote on the SugarHouse application, but Decker said he ultimately did decide to recuse himself out of an "abundance of caution."

"I didn't make up my mind until right before the deliberations started," he said.

Decker said that since leaving Cozen O'Connor he has socialized with firm President and CEO Patrick O'Connor, and met with Cozen to discuss firm-management issues.

"I didn't become a hermit during this process," Decker said.

"We've probably had breakfast or lunch a couple of times to get his perspective on some firm-related issues dealing with our structure and how we do business, and governance issues and things of that sort," Cozen said.

But Decker denied ever speaking to his former partners - or any other nonmember of the Gaming Control Board - "about the applications or the way I would vote."

Cozen has made clear that the firm wants Decker back after his appointment to the Gaming Control Board runs out later this year.

"I think Tad has got to see through his job there with the board, at least through these appeals and whatever other issues he feels are important to him to deal with before he considers what his future would be," Cozen said. "My understanding is that Tad has made it clear to others that he intends to test the waters to see what opportunities are available to him, and I hope he will seriously consider opportunities here at Cozen O'Connor."

Decker confirmed that his future career prospects aren't limited to his former firm - he said he's also been approached about jobs by three other law firms, a professional sports team and a couple of private corporations.

As for Silver's document concerning Decker and Cozen O'Connor, Decker said he's not surprised the latest attack is coming from civic associations located south of Market Street.

Decker said he believes that many residents of the Society Hill and South Philadelphia areas who are critical of the Gaming Control Board's license decisions wouldn't be so "vocal" if both Philadelphia-specific licenses had been awarded to projects planned for the northern areas of the city.

Decker said that while he's "OK with people complaining and moaning and groaning," he feels it is unreasonable for critics to attack him based on flimsy evidence such as "this cockamamie crap about Fred Jacoby."

"And, I recused myself," he repeated, his voice approaching a growl.

Attorneys representing the SugarHouse competitors who didn't get a license have suggested it wasn't enough that Decker recused himself from the vote on the SugarHouse application.

Earlier this month in Harrisburg, during oral arguments before the justices on actions filed against the Gaming Control Board by the disappointed applicants, an attorney for Riverwalk Casino LP reasoned that while Decker had made a commendable effort to avoid a conflict of interests, the board failed to recognize other ways that Decker could have potentially influenced the outcome of the licensing decisions.

Gregory Miller of Miller Alfano & Raspanti in Philadelphia told the court that because the Gaming Control Board winnowed the five Philadelphia-license applicants down to three - among which, he said, Foxwoods Casino

Philadelphia was preferred because of its unique location near the Delaware River in South Philadelphia - Decker's participation in the deliberations over the final choice between Riverwalk and SugarHouse created an error of law even though he did not vote on the individual SugarHouse application.

- *Peter Hall contributed to this report.*