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## Senate of Pennsylvania

November 15, 2007

### Overnight Delivery

The Honorable Romulo I. Diaz, Esquire  
Philadelphia City Solicitor  
City of Philadelphia Law Department  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, Pennsylvania 19102

### **Re: HSP Gaming, LP Application for Submerged Lands License**

Dear Solicitor Diaz:

The purpose of this letter is to provide you with formal notification of the legal and public policy implications of the Philadelphia Department of Commerce's consideration of the Application of HSP Gaming LP for a Submerged Lands License. I have taken the unusual step of commenting upon a proposed action by the City in a sincere attempt to prevent circumvention of state law. The City's legal position, as expressed in your Opinion of November 13, 2007, is not only contrary to well established state law, but has the potential of establishing a precedent that is harmful to the public interest.

Attached for your consideration is a detailed legal analysis concerning the 1907 law and the associated Attorney General Opinion. The memorandum concludes that both the Pennsylvania Administrative Code as well as the Pennsylvania Dam Safety and Encroachments Act explicitly provide that the conveyance of any type of property interest in the submerged lands of the Commonwealth may only be done pursuant to specific authorization of the General Assembly. The attempt to use a 100 year old statute to circumvent legislative authority over submerged lands of the Commonwealth distorts the 1907 law far beyond any recognition. It is grossly irresponsible for the City to pursue this course of action.

Since the Commonwealth's enactment of the Pennsylvania Dam Safety and Encroachments Act in 1978, which repealed the City's authority to convey submerged lands, I am aware of no occasion in which the City has authorized the construction of a structure upon the Delaware riverbed that remotely resembles a casino. HSP's application is a clear attempt to gain a property interest they have otherwise failed to acquire from the legislature. Troubling is the fact that if HSP were successful, it will have successfully avoided paying compensation to the Commonwealth for its occupancy of taxpayer lands. This result is unacceptable. Furthermore,

**The Honorable Romulo I. Diaz, Esquire**  
**Page 2**

if the City were to pursue this course of action, it could have the effect of creating a mechanism, in which all future development along the Delaware that requires construction upon the riverbed avoids state legislative authorization.

Accordingly, I respectfully request that you reevaluate the legal authority of the City Commerce Department to grant HSP's license application. Your careful consideration of this matter is sincerely appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'VF', with a long horizontal flourish extending to the right.

**VINCENT J. FUMO**  
State Senator

Attached Memorandum

cc: Stephanie Naidoff, Director of Commerce