

The City of Revere Massachusetts



City Hall

281 Broadway
Revere, MA 02151
(781) 286-8110
(781) 286-8199 Fax

Daniel Rizzo

Mayor

Office of the Mayor

December 1, 2014

**VIA EMAIL to mgccomments@state.ma.us and
john.s.ziemba@state.ma.us**

Hon. James F. McHugh
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Re: Money Laundering Investigation of Wynn Resorts Ltd.

Dear Commissioner McHugh:

This letter addresses several troubling questions that the Massachusetts Gaming Commission (the "Commission") must now confront in light of the recent Wall Street Journal report that the Internal Revenue Service (the "IRS") Criminal Investigation Division, the Drug Enforcement Administration (the "DEA") and United States Attorneys Offices in Las Vegas and New York are investigating Wynn Resorts Ltd., the parent company of Wynn MA, LLC ("Wynn"), the licensee to operate a category 1 gaming establishment in Region A, for money laundering violations. As described more completely below, the inescapable conclusion from these recent developments is that a violation of the Expanded Gaming Act has occurred: either (i) by Wynn's concealment of this federal criminal investigation from the Gaming Commission; or (ii) by the Commission's failure to publicly consider the impact of the investigation on Wynn's suitability to receive a gaming license.

Because public confidence in the integrity of gaming lies at the heart of the Expanded Gaming Act, it is the Commission's statutory duty to aggressively address these suitability issues in an open and transparent manner. Particularly in light of other highly publicized developments since the award of the Region A license (not the least of which was the indictment of Wynn's partners in the Everett land transaction necessary for development of the gaming establishment), I formally request that the Commission, under the authority granted to it by M.G.L. c. 23K, §§ 4(31), 30A, § 12 and 205 CMR §§ 105.02-04 compel the attendance of witnesses on behalf of Wynn in a public hearing on these issues and, to the extent necessary, issue subpoenas for the production of documents and records from Wynn or require testimony under oath. 205 CMR § 105.03.

I. Statutory Background

As the Commission is well aware, the Expanded Gaming Act was enacted with the "paramount policy objective" of "ensuring public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme." M.G.L. c. 23K, §

1. Accordingly, all gaming licensees are to be “held to the highest standards of licensing, and shall have a continuing duty to maintain their integrity and financial stability.” *Id.*

In many ways, the RFA-1 suitability investigation into all applicants for a gaming license has been the lynchpin of the Commission’s duty to ensure the integrity of licensees. The Commission has repeatedly emphasized that the suitability investigations in connection with the Region A license were uniquely comprehensive, involving teams of State Police and contracted investigators, frequent international travel, and many months of work at a cost of many hundreds of thousands of dollars.

“In evaluating the suitability of the applicant, the commission shall consider the overall reputation of the applicant including, without limitation . . . whether the applicant has a history of compliance with gaming licensing requirements in other jurisdictions . . .” M.G.L. c. 23K, § 12(a). To that same end:

[a]n applicant, licensee, registrant or any other person who shall be qualified under this chapter shall have the continuing duty to provide any assistance or information required by the commission and to cooperate in any inquiry or investigation conducted by the commission. Refusal to answer or produce information, evidence or testimony by an applicant, licensee, registrant or other person required to be qualified under this chapter may result in denial of the application or suspension or revocation of the license or registration by the commission.

Id. at § 13(b).

Likewise, “[n]o applicant, licensee, registrant or person required to be qualified under this chapter shall willfully withhold information from, or knowingly give false or misleading information to, the commission.” *Id.* at § 13(c). *See also* 205 CMR § 112.02 (“[w]ithout limitation, an applicant, licensee, registrant and qualifier shall have a continuing duty to provide updated information to the commission, the bureau and their agents and employees . . .”).

In keeping with these rigorous requirements, the Commission has received several public updates from the Commission’s Investigation and Enforcement Bureau (“IEB”) after the initial positive suitability determination of the applicants. Whether continuing oversight of the Wynn land transaction, investigating additional qualifiers, or monitoring regulatory compliance at the applicants’ other national and international properties, the Commission repeatedly stressed that a finding of suitability could be reconsidered at any time. Indeed, at the beginning of its deliberations on the Region A license award, IEB Director Karen Wells affirmed before the Commission that “suitability of applicants and eventual licensees is ongoing” before updating the Commission on the suitability of the Region A applicants. *Commission Meeting Transcript*, September 9, 2014, p. 17. The Commission has since repeated the same admonition in its public statements regarding the indictments of the Wynn partners in the Everett land transaction. *Commission Meeting Transcript*, October 9, 2014, p. 11.

II. Background of the Wynn Criminal Investigation

The Wall Street Journal recently reported that in August of 2014, the IRS Criminal Investigation Division sent a letter (the “IRS Letter”) to Donald Campbell, Wynn’s outside counsel, requesting information on “Wynn’s U.S. and foreign clients, its domestic and overseas marketing offices, and its internal controls.” Rachel Louise Ensign and Christopher M. Matthews, *Wynn Resorts Probed on Money-Laundering Controls*, Wall Street Journal, November 20, 2014. In particular, the IRS sought information regarding Wynn’s “safeguards against money laundering” and “a list of Wynn’s top 100 patrons from North America as well as its top 50 in each of three other regions: Asia, Europe, and Latin America.” *Id.* The article confirms that the reporter reviewed the actual letter and spoke with people familiar with the

matter. The IRS Letter also sought “an organizational chart of Wynn senior management and staff working in casino and credit operations” and “details of branch offices in the U.S. and abroad that enroll customers into credit programs.” *Id.* The Journal explained that, “Investigators are trying to determine if Wynn violated the laws through its handling of sports-betting activities and through the casino’s dealings with high-roller gamblers,” as well as “determine whether any of Wynn’s VIP customers laundered the proceeds of drug-trafficking through the company’s casinos.” *Id.* The article also confirmed that the DEA and the U.S. Attorney’s Offices in Las Vegas and New York are part of the coordinated investigation.

This federal criminal investigation has amplified concerns that many have about the integrity of the Region A gaming license review. A spokesperson for Governor-elect Charlie Baker said “Because the recent allegations concerning the Wynn project are so serious, (Baker) hopes the Commission will gather all of the information possible to ensure full transparency and the best outcome for the people of Massachusetts.” Jordan Graham and Lindsay Kalter, *Board urged to scrutinize Wynn*, The Boston Herald, November 23, 2014. Baker himself reiterated that it is “important for the Gaming Commission to do its job” and “tak[e] seriously” the issues raised by the IRS Letter. Jack Encarnacao, *Gov.-elect wants Gaming Panel to keep eye on Wynn*, The Boston Herald, November 24, 2014. The Governor-elect’s statements follow the many valid concerns raised about the integrity of the Region A application review by, among others, myself and the residents of the City of Revere, *City of Revere v. Massachusetts Gaming Commission*, Civil Action No. 2014-3253, and the City of Boston. See *Letter from Eugene O’Flaherty Corporation Counsel, City of Boston to Massachusetts Gaming Commission*, September 11, 2014.

III. The Expanded Gaming Act Violations

Beyond the issue of Wynn’s possible complicity in money laundering and illegal sports betting, the IRS Letter raises important questions about Wynn’s compliance with its continuing duty to provide updated information to the Commission consistent with M.G.L. c. 23K, §§ 13(b)-(c), 205 CMR § 112.02, or, in the alternative, the Commission’s candor with the public and compliance with its statutory obligations to review all applicants’ potential violations of law under M.G.L. c. 23K, §§ 1, 12(b). Director Wells’ September 9, 2014 suitability update focused on Wynn’s handling of the Everett land transaction and criminal investigations surrounding Wynn’s Macau junket operations, which the IEB said it continues to monitor.

However, Director Wells did not address the IRS Letter in her September 9 suitability update, and indicated that, “[i]nvestigators have found no additional information at this time, which would necessitate a recommendation that the positive suitability status of the applicant be changed.” *Commission Meeting Transcript*, September 9, 2014, p. 26 (emphasis added).

The fact that Director Wells failed to mention the IRS Letter in her September 9 suitability update raises two troubling scenarios:

- (1) Wynn did not apprise the IEB of the IRS Letter, as was its obligation under M.G.L. c. 23K, §§ 13(b)-(c), 205 CMR § 112.02; or
- (2) The IEB was aware of the IRS Letter but did not disclose it to the Commission or briefed the Commission outside of a posted public meeting, and the Commission did not consider the letter’s impact on Wynn’s suitability as it must under M.G.L. c. 23K, §§ 1, 12(a).

Whichever of the two scenarios is the case, it is plain to see that not only has the public been ill-served either by Wynn or by the Commission, but that one or the other (or both) has violated a central tenet of the Expanded Gaming Act.

A. Wynn's Potential Violation of M.G.L. c. 23K, §§ 13(b)-(c), 205 CMR § 112.02

Given that the IEB's review of Wynn's Anti-Money Laundering Compliance Program "found [it] to be very thorough," (Investigation and Enforcement Bureau, *Report of Suitability of Applicant Entities and Individual Qualifiers*, December 6, 2013, p. 93) surely Wynn was obliged to update the Commission about an IRS investigation of that program as soon as it learned of it, back in August 2014. To say, as Wynn has in media reports, that it is not aware that there is an "investigation," is a parsing of legal terms that should not be tolerated by the Commission. Criminal investigatory agencies are engaged in a review of Wynn's compliance with money laundering laws. Regardless of what word Wynn prefers to use to describe that activity, Wynn had an affirmative obligation to immediately disclose these inquiries to the Commission. See M.G.L. c. 23K, §§ 13(b)-(c), 205 CMR § 112.02.

If Wynn did not disclose information about the federal criminal investigation, Wynn has misled the IEB, the Commission, and the public about its suitability as a gaming licensee in the Commonwealth, withholding crucial information from consideration in the Region A licensing decision. There can be no doubt that this constitutes a violation of M.G.L. c. 23K, §§ 13(b)–13(c) for which an appropriate remedy is "suspension or revocation of the license."

Furthermore, it should be noted that Wynn had a duty to provide any "[d]ocuments and information provided by the Applicant to regulators in any U.S. jurisdiction relative to Macau operations...to the Commission in a timely manner" as a condition to its suitability order entered on December 27, 2013. See *In the matter of: Wynn MA, LLC - Phase 1 Suitability Decision*, Massachusetts Gaming Commission, § IV, p. 9. As such, any response to an IRS letter or other communication from any U.S. jurisdiction regarding investigations that related to Macau's operation should have been reported to the Commission. While it is unclear as to whether Wynn complied with this suitability order condition, it reinforces the fact that issues related to international financial operations were, and continue to be, an ongoing concern of the Commission. It also indicates the Commission's obligations to review such matters thoroughly and comprehensively as the matters directly affect the suitability of an applicant for a gaming license.

B. The Commission's Potential Violation of M.G.L. c. 23K, §§1 & 12(b) and the Open Meeting Law

If Wynn did disclose the existence of the federal criminal investigation, either the IEB or the Commission has wrought a serious harm upon "public confidence in the integrity of the gaming licensing process" by failing to publicly disclose evidence of a serious investigation into a gaming applicant it was considering for the award of the premier gaming license in the Commonwealth. Likewise, the Commission may have (as the City of Revere has alleged it has done on numerous occasions) violated the Open Meeting Law, M.G.L. c. 30A, §§ 18-25, by being briefed on an issue outside of a posted public meeting.

To date, the Commission has not discussed or received information about the Wynn federal criminal investigation during one of its public meetings. A review of the Commission's public meeting notices since August 1, 2014 shows not one posted "executive session" (on any topic). This suggests that the Commission (a) has never been briefed on the Wynn federal criminal investigation, (b) failed to post notice of such a briefing, in violation of M.G.L. c. 30A, § 21, or (c) sought to subvert the Open Meeting Law by having the IEB or others brief commissioners on an individual basis.

Moreover, the Commission had an affirmative obligation to make a determination on Wynn's ongoing suitability to receive a gaming license based on new information that might call into question Wynn's compliance with federal law. See M.G.L. c. 23K, §§ 1 and 12(b). Whether through Wynn's

omission or the Commission's own actions, the Commission has violated its statutory duty to investigate a key element of suitability and thus has not satisfied a necessary precondition of eligibility for licensure. *See id.*

C. Wynn's Demands on License Conditions Raise More Concerns

Wynn's conduct during the Commission's deliberations regarding the Region A license raise suspicions still higher. On September 10, 2014, prior to voting on the award of the Region A license to Wynn, the Commission proposed in a document entitled *Summary of Conditions Wynn MA, LLC*, as General Condition #46 of Wynn's license that:

Wynn shall cooperate with the Commission and the Office of the Attorney General with respect to the investigation of any criminal matter; provided, however, that Wynn shall, *upon receipt of a criminal or civil process compelling testimony or production of documents in connection with a civil or criminal investigation, immediately disclose such information to the Commission.* (Emphasis added.)

However, Wynn opposed the insertion of this language in its license in a combative letter to the Commission that rejected, in their entirety, many of the Commission's proposed conditions and mocked the Commission. *Letter from Steve Wynn to Massachusetts Gaming Commission*, September 12, 2014. Complaining that the Condition was "not included in the two licenses already issued," Wynn proposed to strike from Condition #46 the language regarding disclosure of criminal or civil process, proposing that the Condition simply read:

Wynn shall cooperate with the Commission and the Office of the Attorney General with respect to the investigation of any criminal matter. *Id.*

Condition #46, as well as the affirmative obligation to disclose receipt of civil or criminal process, disappeared from the Commission's final summary of license conditions upon its designation of Wynn as the Region A licensee, replaced by a simple acknowledgement of Wynn's existing obligation to comply with M.G.L. c. 23K and 205 CMR. This is a troubling capitulation by the Commission that raises serious questions of noncompliance with the Expanded Gaming Act, or bias.

IV. Request for Public Hearing and Compelled Testimony


Echoing the Governor-elect, the Mayor of Boston, and citizens throughout the Commonwealth, I say enough is enough. The troubling developments regarding Wynn's suitability are mounting since the Commission's vote to award the Region A license. The public should not have to learn of these allegations from the Wall Street Journal, months after the licensing decision has been made and weeks after the public has been called to decide upon the future of casino gaming at the ballot box. Confidence in Wynn's suitability, and in the ability of the Commission to monitor effectively Wynn's various alleged misdeeds, are at even a lower ebb than after the media's disclosure of Chairman Crosby's business relationship with one of the Wynn landowners.

Skeptics and opponents of gaming often stoke fears that casinos will attract criminals and criminal behavior instead of creating a safe and secure environment for legalized gambling. The Commonwealth has entrusted the Commission to hold casinos and casino operators to the highest standards, through a public and transparent licensing and regulatory scheme. As a result, the Commission should move without delay to investigate who knew of the IRS Letter, to whom that knowledge was disclosed, and whether Wynn's cooperation with the federal criminal investigation meets the standards set forth in M.G.L. c. 23K. If Wynn withheld information about the federal criminal investigation, the

Commission must send the strong signal that the Expanded Gaming Act demands and utilize its regulatory tools accordingly, up to and including the suspension or revocation of Wynn's license.

Regardless, the severity of the federal criminal investigation demands no less than a full and open public hearing, under the authority granted to the Commission by M.G.L. c. 23K, §§ 4(31), 30A, § 12 and 205 CMR §§ 105.02-04. The Commission must compel the attendance of all necessary witnesses to testify under oath and, to the extent necessary, issue subpoenas for the production of documents and records. *See* 205 CMR § 105.03.

Sincerely,



Daniel Rizzo,
Mayor