

City of Philadelphia



Council of the City of Philadelphia
Office of the Chief Clerk
Room 402, City Hall
Philadelphia

(Resolution No. 040913)

RESOLUTION

Authorizing City Council to retain counsel to challenge the validity of the provision of the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S. §1506) that would exempt state licensed gaming facilities from the City's zoning laws.

WHEREAS, The Pennsylvania Race Horse Development and Gaming Act includes a provision (4 Pa.C.S. §1506) that purports to nullify the City's zoning laws with respect to state licensed gaming facilities. In particular, that provision states as follows:

Local Land Use Preemption. The conduct of gaming as permitted under this part, including the physical location of any licensed facility, shall not be prohibited or otherwise regulated by any ordinance, home rule charter provision, resolution, rule or regulation of any political subdivision or any local or state instrumentality or authority that relates to zoning or land use to the extent that the licensed facility has been approved by the [Pennsylvania Gaming Control Board]. The [Pennsylvania Gaming Control Board] may, in its discretion, consider such local zoning ordinances when considering an application for a slot machine license. The [Pennsylvania Gaming Control Board] shall provide the political subdivision, within which an applicant for a slot machine license has proposed to locate a licensed gaming facility, a 60-day comment period prior to the [Pennsylvania Gaming Control Board's] final approval, condition or denial of approval of its application for a slot machine license. The political subdivision may make recommendations to the [Pennsylvania Gaming Control Board] for improvements to the applicant's proposed site plans that take into account the impact on the local community, including, but not limited to, land use and transportation impact. This section shall also apply to any proposed racetrack or licensed racetrack.

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WHEREAS, As a home rule municipality, Philadelphia has complete powers of local self-government, including the power to legislate with respect to zoning and land use planning. As set forth in the annotation to Section 1-100 of the Philadelphia Home Rule Charter, “[t]he General Assembly, having granted to the City powers of home rule pursuant to the Constitution, is now foreclosed from legislating on matters coming within the scope of the powers granted. Legislation in the home rule area is now within the exclusive province of the City Council. Nor may any of the powers granted be withdrawn by the General Assembly; they may, of course, be enlarged by the General Assembly”; and

WHEREAS, By purporting to exempt certain facilities from the provisions of the City’s zoning laws, the Pennsylvania Race Horse Development and Gaming Act violates the City’s home rule powers and the constitutional grant of home rule; now therefore

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That City Council is authorized to retain counsel to file suit challenging the validity of Section 1506 of the Pennsylvania Race Horse Development and Gaming Act.

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CERTIFICATION: This is a true and correct copy of the original Resolution, Adopted by the Council of the City of Philadelphia on the fourteenth of October, 2004.

Anna C. Verna
PRESIDENT OF THE COUNCIL

Patricia Rafferty
CHIEF CLERK OF THE COUNCIL

Introduced by: Councilmembers Clarke, Cohen, Kenney, Reynolds Brown, Goode, Ramos, Blackwell, Miller

Sponsored by: Councilmembers Clarke, Cohen, Kenney, Reynolds Brown, Goode, Ramos, Blackwell, Miller, DiCicco, Krajewski, Kelly, Nutter, Tasco, Mariano and O'Neill