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Via E-Mail

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Susanne George, Research Analyst
California Department of Justice
Division of Law Enforcement
Bureau of Gambling Control
P.O. Box 168024
Sacramento, CA 95816

Re: Proposed Amendment to Gaming Activity Authorization Regulation

Dear Ms. George:

On behalf of Hollywood Park Casino Company, Inc. and Hollywood Park Casino (collectively "HWP"), the following comments are offered in response to the Bureau of Gambling Control's ("Bureau" or "Bureau's") proposed amendment to its Gaming Activity Authorization regulation. HWP appreciates this opportunity to comment and participate in the Bureau's rule making process and makes itself available for further discussions and/or comments should the occasion arise.

I. The Bureau's Proposed Regulation Is Not Supported By Statute

The Bureau proffers that, "(a) regulatory change is necessary to effectively identify collection rate criteria *so as to ensure compliance with collect rate maximums proscribed in statute.*" Penal Code section 337j(f) is the governing statute for the establishment and collection of player fees in gambling establishments. Section 337j(f) states:

"This subdivision is intended to be dispositive of the law relating to the collection of player fees in gambling establishments. A fee may not be calculated as a fraction or percentage of wagers made or winnings earned. The amount of fees charged for all wagers shall be determined prior to the start of play of any hand or round. However,

the gambling establishment may waive collection of the fee or portion of the fee in any hand or round of play after the hand or round has begun pursuant to the published rules of the game and the notice provided to the public. The actual collection of the fee may occur before or after the start of play. Ample notice shall be provided to the patrons of gambling establishments relating to the assessment of fees. Flat fees on each wager may be assessed at different collection rates, but no more than five collection rates may be established per table. However, if the gambling establishment waives its collection fee, this fee does not constitute one of the five collection rates.”

Section 337j(f) places a statutory cap on the number of collection *rates* a gambling establishment may establish at each gaming table while leaving the actual amount of any given fee to the discretion of the gambling establishment. The Bureau now proposes to set the actual amount of a fee as a percentage of the fee assessed to the player-dealer position in each hand or round of play. Presumably this is based on an erroneous statutory interpretation that Section 337j(f)’s cap on collection rates extends to the actual fee itself. We have found no authority for this interpretation and, therefore, the Bureau’s proposed regulation is not supported by statute.

II. The Bureau’s Proposed Regulation is Based On an Erroneous Statement of Law

Penal Code section 330 generally makes it illegal to play any one of eleven (11) specifically enumerated games or any banking or percentage game played with cards, dice, or any device. “Banking games do not include any controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and preclude the house, another entity, a player, or an observer from maintaining or operating as a bank during the course of the game.” (Bus. and Prof. Code section 19805(c).) In a banking game, the house or bank is an active participant and has an interest in the outcome of the game, “taking on all comers, paying all winners, and collecting from all losers.” (People v. Carroll (1889) 80n Cal. 153, 157.)

Percentage games on the other hand are those games, which encompass “any game [] from which the house collects money calculated as a portion of wagers made or sums won in play, *exclusive of charges or fees for use of space and facilities.*” (emphasis added.) (Sullivan v. Fox (1987) 189 Cal.App.3d 676, 679.) In other words, collection rates are permissible provided that they are not based on a percentage of the amount wagered or the sums won. Moreover, the permissibility of such rates or fees is analyzed on the basis of the definition of a percentage game rather than that of a banking game.

The Bureau advances the novel concept that "(c)ollection rates and continuous and systematic rotation of the bank to avoid prohibited sole-source banking of games go hand-in-hand." There is no support for this notion in law. Banking games and percentage games are factually and legally different.

Games with a rotating deal become impermissible banking games once the deal fails to continuously and systematically rotate. Whereas tying a collection rate or fee to the amount wagered or the sums won renders a game illegal as a percentage game – not a banking game. Consequently, the Bureau's linking the continuous and systematic rotation of the deal to the establishment and collection of fees is misplaced and based on an erroneous statement of law.

III. Existing Law is Adequate to Address the Bureau's Stated Concern

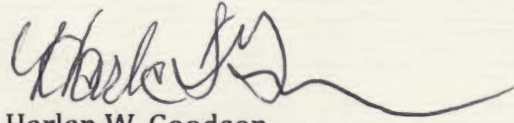
The Bureau has stated that there exists a need for regulatory change relating to fee collections in order to ensure that continuous and systematic rotation of the deal in games featuring a player-dealer position. Existing law already covers this area and an additional regulation will do nothing to ensure compliance with existing laws and/or regulations.

The Bureau is vested with broad powers and authority including the power to investigate suspected violations of the Gambling Control Act, the regulations of the Commission and the Bureau and any suspected violation of law, including violations of the laws pertaining to prohibited gambling activity. (Bus. & Prof. Code section 19826(b & c.) Included in these broad powers is the power to place investigators in licensed gambling establishments to ensure compliance with all statutory and regulatory requirements, including the requirement that games featuring the player-dealer position continuously and systematically rotate the deal.

If the Bureau believes that licensed gambling establishments are allowing games that feature the player-dealer position to be conducted without a continuous and systematic rotation of the deal, current law vests the Bureau with all of the powers and authority necessary to take appropriate action where warranted. There is no need for further regulatory action. Existing law is adequate to address the Bureau's stated concern.

Thank you for providing HWP with the opportunity to comment on the Bureau's proposed regulation. If you would like to discuss this matter further or if you have any questions, please feel free to contact me at, 916-442-1562.

Respectfully,

A handwritten signature in black ink, appearing to read "Harlan W. Goodson", with a long, sweeping horizontal line extending to the right.

Harlan W. Goodson

cc: Deven Kumar – Hollywood Park Casino