



PECHANGA INDIAN RESERVATION

Temecula Band of Luiseño Mtssion Indians

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February 26, 2019

Sent via U.S. Mail and Email

Ms. Susanne George
California Department of Justice
Bureau of Gambling Control
P.O. Box 168024
Sacramento, CA 95816-8024

Re: *Regulation Workshops for Enforcement Against Unlawful Card Room Activity*

Ms. George,

This letter is on behalf of the Pechanga Band of Luiseño Indians ("Band") in response to the Bureau of Gambling Control's ("Bureau") request for comments in advance of the Regulation Workshops addressing the unlawful card room gaming activities.

This letter continues over seven years of advocacy by the Band attempting to address the California Department of Justice's failure to enforce existing California law to stop the play of illegal games in California card rooms. The Pechanga Band incorporates these comments with the numerous correspondences it has had with the Office of the Attorney General and Bureau of Gambling Control on this issue over the past several years. Although the Pechanga Band has numerous concerns regarding the play of illegal games at California card room facilities, per the Bureau's request in this series of workshops we will specifically address the rotation of the player-dealer position, which facilitates the illegal banked games within the card rooms.

I. THE CURRENT PLAYER-DEALER ROTATION SCHEME IN CALIFORNIA CARD ROOMS OPERATES AS ILLEGAL BANKED GAMES IN DIRECT CONFLICT WITH THE CALIFORNIA PENAL CODE AND CALIFORNIA CONSTITUTION.

The player-dealer rotation scheme currently being utilized in California card rooms allows card rooms to operate banked card games in direct opposition of the California Constitution. California Constitution Section 19(e) prohibits "casinos of the type currently operating in Nevada and New Jersey." Consistent with that constitutional prohibition, Penal Code section 330 forbids, among other things, the play of "any banking or percentage game." Penal Code section 330.11 defines the parameters of what may not be considered a banking game as follows:

"Banking game" or "banked game" does not include a 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.(Emphasis added).

Currently, the required continuous and systematic rotation of the player-dealer position does not occur in the games card rooms now offer, and therefore are unequivocally and undeniably in violation of existing state law prohibiting the operation of a bank.

The Bureau of Gambling Control and card rooms do not dispute this lack of rotation mandated under the penal code. Both, the Bureau and card rooms, claim they are only required to “offer” the rotation of the player-dealer position. The decision to simply offer a player-dealer position rotation rather than actually rotate the dealer-player position blatantly does not comply with many of the game rules as approved by the Bureau and is directly incompliant with Penal Code section 330.11.

II. THE CURRENT PLAYER-DEALER ROTATION SCHEME OPERATING IN CALIFORNIA CARD ROOMS WAS CREATED BY A DISGRACED FORMER DIRECTOR OF THE DIVISION OF GAMBLING CONTROL WHO WAS FORCED TO PAY FINES AND SURRENDER HIS GAMING LICENSE AFTER BEING INVESTIGATED FOR CORRUPTION BY THE ATTORNEY GENERAL’S OFFICE.

The erroneous and unlawful “offer” standard the Bureau has affirmatively approved for use by the card rooms relies on a reprehensible memo crafted by former head of California gambling enforcement, Robert Lytle, who delivered the memo with the new lax player-dealer rotation standard while he was negotiating his employment with a card room. The Bureau’s current reliance, and card room industry’s current use, of the Lytle offer standard is particularly troublesome given former California Attorney General, Kamala Harris’ revocation of the Lytle memo and subsequent investigation into Mr. Lytle for various levels of corruption. Mr. Lytle was later investigated for significant collusion charges by the California Attorney General’s Office ultimately causing him to surrender his state gaming license and pay substantial monetary fines. To allow a standard that was created under such disreputable circumstances to continue to operate in the face of unambiguous California law is a disservice to the gaming regulatory industry.

At several meetings between stakeholders and the Bureau of Gambling Control, it has been stated that former AG Harris’ revocation of the Lytle memo, in part, was an underground regulation. There is little disagreement that AG Harris’ June 2016 guidelines established several changes that required commenting, however the illegitimacy of the Lytle memo was not one of them. It is unclear to the Pechanga Band and other tribes how a surreptitious memo, which changed the entire landscape of how California card rooms play games, cannot simply be undone by invalidating the memo. The Lytle memo, which itself was not a part of a rulemaking process,

creates an illegal banking game by the definition of it at Penal Code section 330.11, this should not be permitted to stand.

III. THE FAILURE TO ROTATE THE PLAYER-DEALER POSITION HAS CREATED A BANKING SCHEME THAT IS INCONGRUENT WITH THE LAWS OF CALIFORNIA.

Historically card rooms made their revenues by charging collection fees and food and beverage services. However today, card rooms receive the majority of their revenues from loosely scrutinized payment contracts with third party proposition players (“TPPPs”). The TPPPs make the money they pay pursuant to their contracts with the card rooms by serving as the bank for each table in a card room. Therefore, both TPPPs and card rooms have a significant interest in not relinquishing the bank position, i.e. not rotating the dealer position, because to do so would mean less money wagered with the house advantage by the TPPP and therefore less money to be divided up under TPPP/card room payment contracts.

The failure to mandate a rotation in accordance with the rules of the approved games (prior to games erroneously approved after the Lytle memo referenced above), or at a minimum rotate in accordance with Penal Code section 330.11, give the card rooms an unlawful direct financial interests in the games being played because the more games their banker (TPPP) plays the more money they will be able to charge under their agreements with the TPPP.

The Pechanga Band will continue to participate in the conversation with the Attorney General and Bureau of Gambling Control and will continue to express concerns that unambiguous black letter law is not being enforced at the detriment of the California gaming regulatory system, which negatively impacts the entire gaming industry in California. The Band further requests that all communications on this matter regarding meetings or additional comments be directed to Pechanga General Counsel, Steve Bodmer, at sbodmer@pechanga-nsn.gov or by phone at (951) 770-6171.

Sincerely,



Mark Macarro
Tribal Chairman