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** (1926 - 2019)

February 5, 2021

Bureau of Gambling Control
Attention: Regulations
P.O. Box 168024
Sacramento, CA 95816-8024

Re: Comments on Concept California-style Blackjack draft regulations

Dear Ms. Shimazu:

I write on behalf of Artichoke Joe's with comments on the draft Blackjack regulations.

2071. Game and Gaming Activity Approval

It is not clear from the draft regulation whether prior approval of all games and gaming activities will continue to be required. Currently, subsection (a) requires that an applicant for an initial license submit a report identifying all games and gaming activities, and issuance of the license without objection to the games and gaming activities constitutes approval of them. Subsection (a)(5) then states that it shall be an unsuitable method of operation to offer for play any gaming activity that was not specifically identified in the initial report without "first obtaining authorization from the Bureau." That language is being deleted, and I don't see any similar requirement being added.

Although Gambling Establishment Advisory No. 4, issued in 2003, requires that cardrooms obtain Bureau authorization prior to offering a gaming activity (which at that time was defined to include all games), if approval of games first offered after initial licensure is to be required, the requirement should continue to be included in regulation.

In addition, the criteria that the Bureau applies to determine if a game will be approved needs to be specified in the regulation. Without standards, the regulation is arbitrary and capricious.

2072. Report of Games and Gaming Activities

Section 2072 requires that game rules for each game be submitted with each report. This should be unnecessary. Before any game is approved, game rules are submitted. The game is then assigned a game number. We suggest that for subsequent reporting, if the game rules remain unchanged, the game can be referenced by its assigned number and copies of rules should not need to be submitted with each report.

2073. Blackjack prohibited

The Bureau lacks authority to adopt this proposed regulation, and the regulation is not consistent with statute.

a. Lack of Bureau Authority

Article 3 of the Gambling Control Act governs the adoption of regulations, and the pertinent statutes grant authority solely to the Commission to enforce restrictions on games. The first sentence in Section 19840 reads, "The commission may adopt regulations for the administration and enforcement of this chapter."

Section 19841 then authorizes the Commission to provide for the approval of game rules by the department. It reads,

"The regulations adopted by the Commission shall do all of the following:

...

(b) Provide for the approval of game rules and equipment by the department to secure fairness to the public and compliance with state laws."

Section 19842 then sets out an important limitation on the Commission's right to prohibit the play of any game or to restrict the manner in which it is played and requires specific fact-finding. This section reads:

(a) The commission shall not prohibit, on a statewide basis, the play of any game or restrict the manner in which any game is played, unless the commission, in a proceeding pursuant to this article, finds that the

game, or the manner in which the game is played, violates a law of the United States, a law of this state, or a local ordinance.

This is a significant limitation, requiring the Commission to follow a strict procedure and make a finding. There is no similar provision applicable to the Bureau, clearly indicating a Legislative intent to restrict this type of rule-making to the Commission.

The Bureau's draft regulations cite section 19826 as granting the Bureau authority to adopt these regulations. Section 19826 is part of Article 2 on Administration, and subdivision (g) charges the Bureau with responsibility to "Approve the play of any controlled game, including placing restrictions and limitations on how a controlled game may be played." Subdivision (f) grants the Bureau authority "to adopt regulations reasonably related to its functions and duties as specified in this chapter." However, section 19826 must be read together with sections 19840 to 19842, and the fact that section 19842 provides a strict limitation on passing game rules and imposes it specifically on the Commission but not the Bureau strongly evidences that the Legislature intended the Commission alone to have the power to adopt substantive regulations governing games.

The second sentence in section 19841 contemplates that the Bureau can adopt regulations governing approval, but that sentence does not convey any authority on the Bureau, let alone the same broad authority as conferred on the Commission to control how the game is played. We read that to contemplate that the Bureau has authority to govern the procedure for game approval not to govern the substantive rules on game approval. That is the only interpretation of all these statutes that makes sense.

b. The Proposed Regulation is Inconsistent with Section 330

Section 330 prohibits the game described as twenty-one, which may or may not be the same game as blackjack, and "any banking or percentage game." When section 330 was enacted, all those games featured a banker, not a player-dealer. Since then, new games have been developed which feature a rotating player-dealer position, and not a house dealer, and these games have been held not to be prohibited by section 330. *Sullivan v. Fox* (1987) 189 Cal.App.3d 673). Cases to date have all involved the general prohibition in section 330, not prohibition of any of the eleven specific games, but the principal should be the same. That has been the law for 33 years without any objection from the Legislature. If, for purposes of the general prohibition on "banking games," the existence of the rotating player-

the general prohibition on "banking games," the existence of the rotating player-dealer is a distinguishing feature, that should also be the case for purposes of the eleven specific games.

The Bureau lists as a reference to this section *People v. Gosset*, 93 Cal. 641, a case from 1892, over 120 years ago. That case held that a minor variation in the way a game is played does not remove it from the prohibition in the statute. But here, the difference between California games and Nevada-style games is major, not minor.

The draft regulation would apply to games with a player-dealer and thus would be inconsistent with section 330.

2074. Permissible Blackjack Variations; Required Rules

My comments to section 2073 all apply to this proposed regulation as well.

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We appreciate the opportunity to review the concept regulations and appreciate your consideration of these comments.

Sincerely,



Alan Titus