

MICHAEL ST. DENIS
PROFESSIONAL CORPORATION

25550 HAWTHORNE BOULEVARD, SUITE 118
TORRANCE, CALIFORNIA 90505
TELEPHONE (310) 378-4700
FACSIMILE (310) 378-8722
www.mikestdenislaw.com

December 1, 2014

VIA EMAIL AND U.S. MAIL

California Attorney General Kamala D. Harris and
Bureau Chief Wayne J. Quint Jr.
C/O Susanne George (Susanne.George@doj.ca.gov)
California Department of Justice
Bureau of Gambling Control
PO Box 168024
Sacramento, CA 95816-8024

Re: Proposed Bureau Regulations Governing Fee Collections

Dear Ms. Harris and Mr. Quint Jr.:

This office represents Garden City, Inc. dba Casino M8trix ("Casino M8trix") with regard to gaming issues. On behalf of Casino M8trix, I write to express opposition to the Department of Justice's ("DOJ") proposed regulations concerning fee collections that will be the subject of a public workshop on December 12, 2014.

By way of background, Casino M8trix chooses to charge a collection fee for each player at its tables. Its decision is based solely on market conditions. This decision is one that is legally and properly reserved to the discretion of gambling establishment owners throughout California, and it is our contention that the Department of Justice ("DOJ") lacks authority to regulate collection fees. Further, there is no evidentiary support for the rationale behind the DOJ's proposed regulations. Finally, government price fixing is bad for the consumer and bad for the markets.

1. The Department of Justice lacks authority to propose collection rate regulation.

The DOJ lacks the statutory authority to regulate the fees collected from players for approved controlled gaming activities. Penal Code § 337j(f) is "dispositive of the law relating to the collection of player fees in gambling establishments" and therefore preempts the DOJ from enacting regulations to mandate collection rates statewide. Penal Code § 337j(f) expresses long-standing California policy that the collection fees charged by gambling establishments, if any, are reserved to the gambling establishments.

The history of the law on collection rates is instructive on the DOJ's lack of authority with respect to this issue. There was a brief period in 1998, immediately after the Gambling Control Act ("GCA") (Business & Professions Code Section 19800 *et seq.*)¹ became effective on January 1, 1998, when the DOJ possessed authority to enact regulations governing collections. Its authority to enact regulations governing fee collection was eliminated with the passage of Assembly Bills 2415 (Brown) and 518 (Brown)² in the fall of 1998. In fact, the DOJ's only authority relative to collection rates was added in 2002 and is narrowly restricted to ensuring that the rates for each approved gaming activity as set by the gambling establishments are made public.³ Bus. & Prof. Code § 19826(g). In 2003, Penal Code §337j(f) was amended to authorized gambling establishments to waive all player collections.⁴ In 2007 it was amended against to increase from three to five the number of permissible collection rates.⁵

The DOJ's authority "to approve the play of any controlled game, including placing restrictions and limitations on how a controlled game may be played" found in the first sentence of Bus. & Prof. Code § 19826(g), commenced in 1998 with the passage of S.B. 8. This language, however, does not provide, nor can it be extended to provide, the DOJ with the authority to regulate collection rates via its authority to approve and regulate the play of controlled games. How a game is played is substantively separate and distinct from fees that may be collected from the players who seek to play the controlled game. While subsection (f) of Bus. & Prof. Code § 19826 grants the DOJ authority to adopt regulations that are reasonably related to its functions and duties, the DOJ cannot rely on its general rulemaking authority to regulate collection rates because, again, Penal Code § 337j(f) is "dispositive" on this issue.

The DOJ's absence of statutory authority over setting or regulating collection fees or rates is consistent with its role in regulating controlled gambling in California. The GCA established the comprehensive regulation of non-tribal gambling establishments, dividing that regulation between the California Gambling Control Commission ("CGCC") and the DOJ. The CGCC is responsible for the licensure and regulation of various legal gaming activities and establishments while the investigation and enforcement of those activities is left to the DOJ. Bus. & Prof. Code § 19826 limits the DOJ's functions and duties to investigations (Bus. & Prof. Code § 19826(a)-(d)) and enforcement §19826 (e)) of licensees and various legal gaming activities.⁶

¹ The Gambling Control Act ("GCA") (Bus. & Prof. Code §§ 19800 *et seq.*) was enacted at the end of the Regular Legislative Session in 1997 with the passage of Senate Bill 8 (Lockyer). Stat. 1997, c. 867.

² Respectively, Stat. 1998, c. 423 (A.B. No. 518, Brown) and Stat. 1998, c. 424 (A.B. No. 2415, Brown).

³ Stat. 2002, c. 738 (A.B. 2431).

⁴ Stat. 2003, c. 756 (A.B. 278, Bermudez).

⁵ Stat. 2007, c. 493 (A.B. 356, Mendoza).

⁶ The Bureau's investigatory authority is specified in §19827 and its disciplinary authority is specified in sections 19930-19931.

State law preempts the DOJ from interfering with or regulating the amount of the collection fees charged by gambling establishments through Penal Code § 337j(f). Whether collection rates should be charged at all and how much those rates should be are exclusively reserved to the discretion of the gambling establishments—the DOJ's role is strictly limited to ensuring there are no more than five separate rates and to publicizing those rates. The DOJ's attempt to bootstrap collection rate regulations through the approval of gaming activity/activities exceeds its authority because it conflicts with Penal Code § 337j(f) which reserves this authority to the gambling establishments.

2. There is no evidentiary support for the DOJ's conclusion that imposing a collection will promote the rotation of the Player-Dealer position.

The DOJ suggests that requiring each player to pay a collection fee that is a percentage of the collection rate paid by the person or entity occupying the player-dealer position will “provide a better likelihood that more players may accept the deal as it is continuously and systematically rotated amongst the players.” The DOJ provides no authority, study or statistics for its opinion. Regulations cannot be based on speculation or conjecture; their purpose must be supported by statutory authority (lacking here) as well as evidence. Without any evidence, the DOJ has no basis to support its opinion.

3. The DOJ's *ultra vires* attempt to set and regulate collection rates is an unwelcome return to command and control ideals long rejected by California.

If the DOJ wants the authority to regulate collection rates it must first amend Penal Code § 337j(f). An effort to amend this section was proposed, and failed, in the 2013-2014 regular legislative session. A.B. 820 (Gomez) sought to amend Penal Code § 337j(f) and change state policy on the subject of collection rates as follows:

1. Repeal existing law authorizing a gambling establishment to waive the collection of fees;
2. Repeal statutes authorizing the assessment of flat fees for each wager;
3. Mandate the player-dealer pay a fee to the gambling establishment for each hand or round of play;
4. Mandate each other player pay a fee from his or her own funds to the gambling establishment for each wager made in every hand or round of play;
5. Require the DOJ approve all player fees and mandate that the fee schedule ensure the fee paid by each player on each wager is not less than one-third (1/3) the amount of the fee paid by the player-dealer in each hand or round of play.

(Senate Gov. Org. Committee Staff Analysis on A.B. 820, June 17, 2013). A.B. 820 failed to pass out of the Senate Gov. Org. Committee on June 19, 2014 and died at the end of the Regular Session.

The rationale for leaving the amount of, or existence of, collection rates to the gambling establishments was explained in the successful opposition to A.B. 820:

AB 820 would undo over a decade of sound policy and would severely limit a card room's ability to operate [C]ard rooms have had the ability to waive collection fees for their customers, and there is no valid policy reason why card rooms should be forced to charge their customers more than other gaming business in the state.

[S]pecial interests should not be permitted to abuse the legislative process to solely benefit themselves to the detriment of every other card room. This proposal is a form of legislative price fixing and it should not be tolerated.

(Senate Gov. Org. Committee Staff Analysis on A.B. 820, June 17, 2013).


The Legislature, though Penal Code § 337j(f), left it to the market to set the rates of player collections. Barring a change of policy by way of amending the law, the DOJ lacks both the actual authority, as well as the imprimatur of authority, to regulate the amount or existence of collection fees.

Conclusion:

The DOJ's proposed regulations exceed its statutory authority, lack any evidentiary support for its stated purpose, and are contrary to established state policy. With respect to the issue of collections, it should be left to the industry and market to decide if and how much a particular collection fee should be. For these reasons, Garden City, Inc. dba Casino M8trix opposes the DOJ's currently proposed regulations.

Very truly yours,

MICHAEL ST. DENIS
PROFESSIONAL CORPORATION



Michael St. Denis
Outside Counsel for
Garden City, Inc. dba Casino M8trix