



CALIFORNIA NATIONS
INDIAN GAMING ASSOCIATION



October 26, 2023

Via Electronic Submission

Andreia McMillen
Staff Services Manager
Bureau of Gambling Control
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Re: Comments on Draft Regulatory Language for Player-Dealer Card Games

Dear Ms. McMillen:

On behalf of the Tribal Alliance of Sovereign Indian Nations (TASIN), an intergovernmental association of federally recognized tribal governments throughout Southern California, and the California Nations Indian Gaming Association (CNIGA), a non-profit trade association which represents 52 federally recognized tribal governments throughout California, we are writing to provide comments on the draft regulatory language for (1) rotation of player-dealer position and (2) approval of blackjack-style games. Both proposals were circulated by your office on September 11, 2023. We note that the regulations do not address Baccarat, inherently a banked game that cannot feature a player-dealer position and cannot possibly comply with legally mandated rotation requirements.

CNIGA and TASIN appreciate and view the proposals as a good first step in providing much-needed clarity on the types of card games permitted at California's state-licensed cardrooms. For nearly a decade, we and many tribal governments throughout California have been seeking relief from what we believe to be unlawful games at cardrooms. Although these draft regulations are intended to help bring those games into compliance with California law, we recognize both proposals require work to achieve necessary clarity and ensure all interested parties have a clear understanding regarding games offered at card rooms versus banked games authorized solely to Indian tribes pursuant to voter-approved amendments to the California Constitution. Most importantly, these regulations are useless without meaningful enforcement and penalties for violators, thus we recommend that significant and mandatory penalties be

imposed for violations of the regulations and posted rules. Our initial comments on the two proposals are set forth below.

1. Rotation of Player-Dealer Position

California's Constitution prohibits casinos "of the type currently operating in Nevada and New Jersey." Article IV, section 19. As explained by the California Supreme Court:

"[T]he 'type' of casino referred to must be an establishment that offers gaming activities including banked table games and gaming devices, i.e., slot machines Similarly, 'the type' of casino 'operating in Nevada and New Jersey' presumably refers to a gambling facility that did not legally operate in California The type of casino then operating in California is what has commonly been called a 'card room' ... a type that did not offer gambling activities including banking games and gaming devices."

Hotel Employees & Restaurant Employees v. Davis, 21 Cal.4th 585, 604-05 (1999) (citations omitted). In addition, California's Penal Code prohibits "banking" games. Penal Code, Section 330. "Banking game has come to have a fixed and accepted meaning: the 'house' or 'bank' is a participant in the game, taking on all comers, paying all winners, and collecting from all losers." Sullivan v. Fox, 189 Cal.App.3d 673, 678 (1987) (citations omitted).

Section 330.11 of the Penal Code provides that a card game is not a banking or banked card game if it meets certain specific requirements:

"'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. For purposes of this section it is not the intent of the Legislature to mandate acceptance of the deal by every player if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. The house shall not occupy the player-dealer position.

With these limitations in mind, we were pleased to see that the proposed regulations correctly recognize that state-licensed cardrooms are not permitted to offer banked card games. The proposed regulations make a credible effort to help insure that the player-dealer position does, in fact, rotate among the players at the table. For example, the requirement that the dealer offer the player-dealer position both verbally and physically to each of the seated players at the table before each hand is critical. Proposed Sec. 2077(a)(3). However, we suggest providing additional clarity on how the dealer must make the offer to each player. For instance, the offer must be audible enough for all players to hear and for regulatory personnel that might be monitoring the game play. In addition, the regulations need to address requirements for placement and visibility of timers both for players and surveillance purposes.

TASIN and CNIGA are concerned about the provision which states that the player-dealer must rotate to at least two players every 40 minutes or the game shall end. Proposed Sec. 2077(a)(4). The 40 minutes should be reduced to meet the penal code standard of continuous and systematic. While we support the goal of this provision, we are concerned that the limitation is easily avoided by "ending" a game after 39 minutes, immediately starting a new 39-minute game, and so on. The regulations should make clear that ending a game after an appropriate amount of time does not restart the 40-minute clock. The game cannot restart unless two players take the player-dealer position, per Sec. 2077(a)(4).

The regulations do a good job stating that any player may assume the player-dealer position. Proposed Sec. 2077(a)(2). However, we are aware that some cardrooms impose requirements, such as a minimum cash balance, for a player to serve as a player-dealer. The regulations should expressly prohibit cardrooms from limiting which players are permitted to serve as a player-dealer. Similarly, a cardroom owner, licensee, or employee (even if on breaks) should not qualify as one of the required two players for rotation. If they are playing at the table, they should be required to wear an identification badge, identifying them as an employee. Only one TPPPS can occupy a position at a table at a time.

Both CNIGA and TASIN are aware that the play of player-dealer games at some cardrooms does not always follow the regulations and posted game rules. Instead, there is a "wink and a nod" approach to how the game is played. As such, CNIGA and TASIN recommend that significant and mandatory penalties be imposed for violations of the regulations and posted rules. In addition to financial penalties, willful violations should result in a cardroom not being allowed to offer player-dealer games until remedial action has been taken. Unless there is active and aggressive enforcement with significant consequences, the proposed regulations are unlikely to be effective.

In addition to the rotation requirement, TASIN and CNIGA urge that regulations be adopted to expressly prohibit zero-collection games. Requiring a collection from all players is one of the distinguishing factors between a legal card game and an illegal banked card game. Thus, the regulations should set minimum collection requirements for all games. Further, we recommend that TPPPs and cardrooms be prohibited from paying, rewarding, or otherwise incentivizing the collection fees of other players.

Finally, CNIGA and TASIN recommend the adoption of more stringent regulations for Third Party Proposition Players (TPPP). The regulations should require a close review of financial sources before any license is issued and ongoing reporting that shows who receives funds generated by a TPPP. To protect the integrity of the industry, the regulations also should expressly prohibit any person or entity with an ownership interest in a cardroom from also having any financial interest in a TPPP or a TPPP funding source.

2. Approval of Blackjack-Style Games

Both TASIN and CNIGA appreciate the effort to try to clarify that cardrooms are not permitted to offer blackjack/21. Blackjack/21 is clearly a game prohibited by the California

Constitution, except at tribal gaming facilities on Indian lands. However, we think the proposed language as drafted could be abused to circumvent the intent of the rule.

For example, the definition of blackjack in Proposed Section 2073(a) is very specific. While the language in Proposed Section 2073(b) about modifications helps, it is not sufficient. As written, the language in Proposed Section 2073(a) could be read to mean that a game with even a slight variation other than those listed would not be a prohibited game. For example, Proposed Section 2073(a)(1) says that the player-dealer makes a "single wager against all players". However, what if the game allows side bets or the wager is broken into two parts? It also says that wagers are placed before the initial deal. What if the first two cards are dealt face down to all players (including the player-dealer) before the initial wagers? These are just two potential openings that could be used to undermine the intent of the proposed regulation.

In addition, the limitations in Proposed Section 2074 are helpful, but there are a number of ambiguities with respect to the undefined terms used in that section. For example, what is a "win" in the context of a blackjack-style game? Would a "bonus" for achieving 21 be the same as a "win"?

Further, CNIGA and TASIN recommend that significant and mandatory penalties be imposed for violations of the regulations and posted rules. Unless there is active and aggressive enforcement with significant consequences, the proposed regulations are unlikely to be effective, and the controversy will remain ongoing.

TASIN and CNIGA suggest that the entire approach to blackjack-style games be reconsidered. As drafted, the proposal is unduly complicated with too many potential ways around the restrictions. Basically, the rule says a game that meets certain requirements is prohibited, notes that various modifications also are prohibited, but then says the game is allowed if other modifications are made. We believe that a better approach would be to clearly define the rules for a game that is allowed, with all modifications prohibited. Such an approach would provide clarity to both cardrooms and the public. It also would make enforcement by the State significantly easier.

Conclusion

Our comments to these regulations seek to protect the voter-approved gaming rights which have been so vital to California tribal governments, providing the means to deliver essential services such as housing, education, healthcare, environmental protections, cultural preservation, elder care, fire services and more. In addition, limited and non-gaming tribes have benefitted from more than \$1.7 billion in vital revenue sharing over the last 20 years. Tribal government gaming also serves as an important economic engine for California, directly and indirectly generating the following total economic and fiscal impacts on the California economy:

- 124,300 jobs
- \$20 billion in output
- \$9 billion in wages to employees
- \$3.4 billion in taxes and revenue sharing payments to federal, state, and local governments

CNIGA and TASIN appreciate the effort that went into developing the proposed regulations. While both should be improved significantly, we commend the effort to finally address the lack of clarity about the games permitted at California cardrooms, which has resulted in widespread illegal gaming. In addition to the issues addressed in the proposed rules, we believe it is critical to address other issues, such as licensing of TPPP's, enforcement and prohibition of zero collection games. Both CNIGA and TASIN look forward to working in partnership with the State to help develop a comprehensive and effective set of regulations that clearly distinguish games offered at California cardrooms from the banked games solely authorized to Indian tribes and offered in tribal gaming facilities pursuant to the California Constitution.