



**PALA BAND OF
MISSION INDIANS**

October 26, 2023

Via Email BGC_Regulations@doj.ca.gov

Director Yolanda Morrow
ATTN: Andreia McMillen, Staff Services Manager
Bureau of Gambling Control, California Department of Justice
P.O. Box 168024
Sacramento, California 95816-8024

RE: BGC Draft Concept Language – Rotation of Player-Dealer Regulations

Dear Director Morrow,

The Pala Band of Mission Indians hereby submits these written comments in response to the Bureau of Gambling Control's September 11, 2023, notice of intent to promulgate regulations concerning rotation of the player-dealer position in a controlled game and specific concept language prior to the initiation of the formal rulemaking process in order to obtain input and comment.

The Pala Band of Mission Indians submitted on October 3, 2012, a request that your office investigate certain gaming practices at California cardrooms, which the Tribe believes are violating the California Constitution, the Penal Code and the Gambling Control Act, as well as its implementing regulations, to the detriment of our tribal gaming business.

Pursuant to the plain language of California Penal Code Section 330.11, the player-dealer position can only be used where the published game rules require all three of the following:

- (1) The player-dealer position “must be continuously and systematically rotated amongst each of the participants during the play of the game”;
- (2) “Ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game”; **and**
- (3) “Preclude the house, another entity, a player or an observer from maintaining or operating as a bank during the course of the game.”

Section 330.11 further provides that: “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.” (Emphasis added).

A review of rotation of the player-dealer position will require necessarily that the position itself as played in each game is authorized by Penal Code Section 330.11. Any interpretation of the meaning of “continuously and systematically rotated amongst each of the participants during the play of the game” will necessarily need to take into account and comply with the three statutory requirements of the player-dealer position as well as California constitutional, statutory, and case law that establishes, as a matter of law, what is and what is not a prohibited “banking game” within the meaning of California law.

For this reason, we have included with our comments at this preliminary stage an analysis and summary of California law pertaining to banking games at California gambling establishments and any player dealer position, including the California Constitution, case law, and legislative history of Penal Code Section 330.11. We believe this analysis and summary, attached at **Tab A**, will be helpful and instructive as any interpretative language for the meaning of “continuous and systematic rotation” for non-banking card games is considered.

We have further included at **Tab B** proposed revisions to the BGC Draft Concept Language, which are highlighted in redline.

Finally, a resounding assertion at past BGC workshops on this issue by the cardroom industry is to urge the BGC not to issue any regulation. We agree that no new regulation may be necessary. BGC enforcement of the black letter law and existing approved game rules requiring rotation every two hands would be sufficient.

We appreciate this opportunity to provide written comments and will continue to comment as the process moves forward.

Sincerely,

Robert Smith, Tribal Chairman
Pala Band of Mission Indians

TAB A: Analysis and Summary of California Law Pertaining to Banking Games at California Gambling Establishments and Any Player-Dealer Position

It is axiomatic that the California Constitution, at Article 4 Section 19, prohibits banking card games for any gambling establishment in California, other than an Indian tribe authorized by a Tribal-State Gaming Compact.

The California Constitution, as interpreted by the California Supreme Court, the California appellate court in the Oliver case, and Section 330.11 of the Penal Code make clear that **any player-dealer position must continuously and systematically rotate.**

This requirement for any player-dealer position to continuously and systematically rotate is to avoid the creation of a prohibited banking game, described by the California Supreme Court as a game where: One player or entity “participates in the action as the one against the many, taking on all comers, paying all winners, and collecting from all losers, doing so through a fund generally called the bank.” (HERE v. Davis, (1999) 21 Cal.4th 585)(internal citations omitted).

The California Supreme Court in HERE specifically held that a banking game prohibited by the Constitution and statute includes games “banked by someone other than the owner of the gambling facility,” citing, Oliver v. Los Angeles County, (1998) 66 Cal.App.4th 1397.

A player-dealer position had been used in California cardrooms since the early 1980s and a line of California court cases considered whether this method of play was a prohibited banking game.

In Huntington Park Club v. Los Angeles County (1988) 206 Cal. App.3d 241, the appellate court found that Pai Gow was not a banking game because during the play of the game, “the dealer position continuously and systematically rotates among *each* of the participants.” Thus, the court found, “the record does not establish that either plaintiffs (the house) or any other entity maintains or operates a ‘bank.’”

However, in Oliver v. Los Angeles County (1998) 66 Cal. App.4th 1397, subsequently adopted by and given constitutional stature by the Supreme Court in the HERE case above, the same appellate court considered the game of Newjack, where the rules of play allowed players to decline the rotation of the bank, thus allowing a player to be the player-dealer for “more than two consecutive hands.” The court found that it is “the *potential* for a banked game under Newjack’s rules, and not the current mode of play, which determines whether Newjack is a banking game.”

The Oliver court held:

“We now hold that a game will be determined to be a banking game if under the rules of that game, it is possible that the house, another entity, a player, or an observer can maintain or operate as a bank during the play of the game. *In Newjack, the player-dealer position does not have to rotate among players.* If the other players decline to accept the player-dealer position, one player can act as a player-dealer for repeated hands and such a player need not go broke after a few hands. *A player with a significant amount of money to bet can hold the position of player-dealer for a long time, and thus keep the inherent playing advantage for him or herself. The effect would be a banked game because it could be said of such a player that he or she is ‘taking on all comers, paying all winners, and collecting from all losers.’ Sullivan [v. Fox (1987)] 189 Cal.App.3d at 678, 235 Cal. Rptr. 5.)* Because the rules permit such an occurrence, we hold Newjack is a banking game and therefore, as presently constituted, prohibited under section 330.”

(*Id.* at 1409-1410) (emphasis added).

Following the HERE and Oliver court cases, efforts began in the Legislature to amend the Penal Code to add a provision addressing the player-dealer position. Ultimately, Penal Code section 330.11 was added, which now provides:

“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.”
(Emphasis added).

The history of this legislation enacting Penal Code Section 330.11 is instructive. In his floor statement to the Assembly, the author of AB 1416, Assembly Member Herb Wesson stated:

“This bill attempts to clarify that card clubs may offer games that feature a player-dealer position, so long as the rules of the game require a continuous and

Pala Band of Mission Indians

Attachment TAB A to Correspondence to BGC Director Morrow October 2023

Written Comments on BGC Draft Concept Language dated 9-11-2023 re Rotation of Player-Dealer Regulations

systematic rotation of the player-dealer position . . . This bill clarifies that these game are not “banked games.” Moreover, this bill does not legalize 21 or any other new card game.”

The Attorney General similarly advised the Governor that with respect to AB 1416 that “...the judicially-ascribed meaning of “banking game” has been constitutionalized (citing, HERE v. Davis, (1999) 21 Cal.4th 585) and cannot be narrowed by statute” and noted he “understood that an urgency measure will be introduced early in the next session to correct these deficiencies... [and the Division] can probably continue to deter violations of the constitutional prohibition in the brief interim.” AB 1416 was signed by the Governor with the message that, “I have been assured by the author of this bill that such clean-up legislation will be introduced early in the next session.”

Accordingly, AB 54 (Wesson) was introduced and passed, resulting in the current language of Section 330.11.

Subsequent legislative efforts in 2008 attempted to weaken the required mandatory consistent and systematic rotation of the player-dealer position by requiring only that the deal be “offered” around the table to all seated players, AB 1664 (Yee), failed.

Attachment TAB B To Pala Band of Mission Indians Correspondence to BGC Director Morrow dated October 2023 Written Comments on BGC Draft Concept Language re Rotation of Player-Dealer Regulations dated 9-11-2023

TITLE 11. LAW
Division 3. Gambling Control
Chapter 1. Bureau of Gambling Control
Article 7. Games.

Section 2077. Games with a Player-Dealer Position; Rotation; Operation of Game.

(a) A game that features a player-dealer position shall include in its rules the following:

(1) The player-dealer position may only be occupied by a person seated at the table, and shall be offered to the other seated players at the table before every hand.

The game rules shall specify the means by which the player-dealer position is selected at the opening of a new game, and upon rotation of the player-dealer position to the next person.

(2) There shall be written notice at each table informing patrons when a player may accept the player-dealer position. The written notice shall state "Any player can assume the player-dealer position when it is offered to them. The player that assumes the player-dealer position cannot win or lose more than the amount they wager on any single round of play. If the player-dealer does not have

sufficient funds to cover all wagers, players will not get paid and wagers will be settled according to the approved game rules. Such rules must comply with subdivision (b) herein and expressly prohibit the TPPPS from covering wagers when not occupying the player-dealer position.

(3) Before every hand, the dealer shall offer the player-dealer position verbally and physically to each of the seated players at the table. The offer shall be visible to surveillance cameras.

(4) The player-dealer position shall rotate continuously and systematically to another player after every two consecutive hands at least two players other than the TPPPS every 40 minutes or the game shall end.

(5) If rotation of the player-dealer position has not occurred and the game ends as prescribed in subdivision (a)(4) of this section, game play shall stop, the table shall be cleared of all wagers and cards, no cards shall be dealt, and no wagers shall be made. No further play shall be allowed or commenced unless and until another person accepts the player-dealer position. ~~If there is only one player at the table in addition to the TPPPS, the player-dealer position shall rotate to that player a minimum of two times every 40 minutes or the game shall end. Play may not resume at the table until after the shuffling of all cards and new game begins.~~

~~(6) If the 40 minute mark is reached during a round of play, the round of play may be completed before the game ends.~~

(7) If the player-dealer position is occupied by a TPPPS owner licensee, or a TPPPS employee licensee, as defined in California Code of Regulations, title 4, section 12002, subdivisions (aw) and (as), the next person in the rotation of the player-dealer position shall not be the owner or employee of that TPPPS and shall not have any financial relationship with that owner, employee or TPPPS.

Additions shown in underline; deletions shown in ~~strikeout~~

Attachment TAB B To Pala Band of Mission Indians Correspondence to BGC Director Morrow dated October 2023 Written Comments on BGC Draft Concept Language re Rotation of Player-Dealer Regulations dated 9-11-2023

~~12~~ (b) A game that features a rotating player-dealer position shall not:
~~23~~ (1) Allow any person, other than the person occupying the player-dealer position, to
~~34~~ pay winners or collect from losers.
~~45~~ (2) Allow any person to place a wager as a supplement to the wager of the person
~~56~~ occupying the player-dealer position.
~~67~~ (3) Allow any person to place a wager against a person who is not the person
~~78~~ occupying the player-dealer position.
~~89~~ (4) Allow any persons to combine funds to place a single wager, regardless of
~~910~~ whether either person is an active, seated participant in the game.
~~1011~~ (c) No more than one third-party provider of proposition player services shall be permitted
~~1112~~ to offer services at a table where a game that features a rotating player-dealer position
~~13~~ is being offered for play.
(d) Game play shall be monitored by the BGC to ensure the rules of the game and play pursuant thereto render the maintenance of or operation of a bank impossible.

14 Note: Authority cited: Section 19826, Business and Professions Code.
15
16 Reference: Sections 19805, 19826, Business and Professions Code; *Oliver v. County of Los*
17 *Angeles* (1998) 66 Cal.App.4th 1397.
18

Additions shown in underline; deletions shown in ~~strikeout~~



C A L I F O R N I A
DEPARTMENT OF JUSTICE

September 11, 2023

To: Stakeholders and Rulemaking List Members

Re: Rotation of Player-Dealer Regulations – Draft Concept Language

The Department of Justice, Division of Law Enforcement, Bureau of Gambling Control (Bureau) intends to promulgate regulations concerning rotation of the player-dealer position in a controlled game. The attached concept language is provided for your consideration. The Bureau will review any feedback, comments, or recommendations that you provide. The Bureau is providing this notification and the attached concept language in order to obtain input on the proposed regulations prior to the initiation of the formal rulemaking process. This concept language is subject to further review and revision by the Bureau.

Please be advised that the Bureau has not yet initiated the formal rulemaking process for this regulation, and is presenting this concept language for the benefit of stakeholders and other interested persons so that they may provide proposed amendments of, or alternatives to, the concept language. The Bureau will provide additional notifications once the formal rulemaking process is initiated.

Text suggestions, legal analyses, and comments will be accepted until October 26, 2023. Written comments may be submitted to Staff Services Manager I Andreia McMillen, by mail at the below address or by e-mail (BGC_Regulations@doj.ca.gov). Additionally, questions concerning the rulemaking process or future rulemaking activities may be directed to Andreia McMillen at the email provided above.

Sincerely,

A handwritten signature in black ink that reads "Yolanda Morrow".

YOLANDA MORROW
Director

For ROB BONTA
Attorney General