

Stand Up For California!

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www.standupca.org

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September 20, 2013

James Allen
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

RE: Rulemaking - Third-Party Providers of Proposition Player Services
and Gambling Businesses Regulations (TPPPS)

Dear Mr. Allen,

As you may know, *Stand Up For California* is a nonprofit public benefit corporation that acts as a statewide community watchdog focusing on gambling issues affecting the State. Thank you for taking my call last week regarding comments on Third-Party Providers of Proposition Player Services (TPPPS) and Gambling Businesses Regulations. I was unable to attend the workshop but have reviewed the handouts and listened intently to the audio recording online. I hope you will find *Stand Up For California*'s comment helpful and useful in the development of a proposed regulation for circulation.

In the year 2001 AB 54 was introduced as a technical “clean up legislation” to a prior bill AB 1416 that was vetoed by then Governor Davis. *Stand Up For California* opposed AB 1416 believing it an attempt to legalize banking games in statutory law. The following year, cleanup legislation AB 54 was passed by the State Legislature, signed by the Governor and enacted.¹ Until a successful challenge is made regarding the constitutionality of this statutory language the California Gambling Control Commission (CGCC) is mandated to establish a regulatory rule.

The CGCC is mandated to establish regulations addressing the player/dealer position which state that it, “must be continuously and systematically rotated amongst each of the participants 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”. Regulators in good faith attempted to put in place a framework of oversight standards that perhaps appeared to work at that time. However, the evolution of TPPPS

¹ This legislation was intended to balance the gaming market for California's card club operators with the recent passage of Proposition 1A in 2000, which provided tribal governments with a monopoly on banking and percentage gaming operations.

contracts has created an entirely new system of card club gaming currently played in the field that includes; (1) significant reimbursement from TPPPS Contracts², (2) waiving of the table collection fees of per-hand or by-the-hour of patrons and, (3) the mere offering of the deck to other players instead of “rotating” the player/dealer position as statute and regulation requires. This evolving activity does not fit the regulatory framework considered in statute but rather blurs the relationships between card clubs and TPPPS companies.

Additionally, California card clubs are now permitted to own and operate TPPPS companies as long as the TPPPS company does not bank games in their own clubs. This has evolved into a new system of “cross-banking” by which card clubs provide TPPPS to their nearby competing clubs and vice-versa. The obvious question is how are consumers/patrons assured that there is no collusion among card clubs and proposition player companies? *Moreover, how are State Regulators assured there is no collusion among card clubs and proposition player companies if the CGCC does not have the authority and appropriate methodology to review and audit the terms of TPPPS contracts with card clubs?*

Commissioner Richard Schuetz comments at the August 28th workshop brought not only humor in his comparison of California’s regulatory scheme of TPPPS contracts by comparing them to the evolution of creatures living in the Galapagos Islands but clarity in the folly in attempting to control terms within contracts that are uncontrollable. Creating standards for reimbursement to card clubs from TPPPS based on office space, tip agreements, advertising, decks of cards, parking space, use of an employee break room etc., creates ambiguity and potential for activity that that may affect the integrity of the industry. *Clearly, this is the type of arrangement that blurs the distinction that separates card clubs and TPPPS companies and begins to give the appearance of partnerships.*

Commissioner Schuetz went on to say using this type of criteria “will only open multiple channels through which money can flow”. *Clearly, there is no empirical methodology to make proper determinations in the evaluation of the TPPPS contracts as they exist today.* Commissioner Schuetz suggested something simple, “count the number of tables for which the TPPPS services are being provided”. This is something that can actually be counted and validated. *This seems like a reasonable arrangement but should the methodology go further to ensure that a flat fee is reasonable?* Having observed the gaming industry for almost two decades now, it is clear that one size does not fit all. Since there is a significant difference between clubs operating from 2 tables to 200+ tables, it seems reasonable to create a tiered flat-fee dependent on the total number of table games offered by the gaming facility and serviced by the TPPPS contracts. Perhaps a tiered flat-fee may help provide a more equitable fee schedule to the smaller facilities.

California Card clubs have always collected per-hand or per-hour-fees. The method of making money at a California Card club is by the collection of table fees. However, the games in the field are currently being played in some instances without the collection of

² TPPPS contracts have become a significant source of revenue for card clubs giving the appearance that is the equivalent to a “kick-back”.

table fees per-hand or by-the-hour. If no table fee is collected by the card club it would appear that there is reliance either in whole or in part on the TPPPS contract. A TPPPS contract becomes a significant source of revenue for the card club. This is inconsistent with the statute.

As I stated at the beginning of this letter of comment *Stand Up For California* opposed AB 1416 believing it an attempt to legalize banking games in statutory law.³ If TPPPS contracts are being used in this manner; it would appear my first impression of 3rd party provider services was not so far-fetched.

In general, *Stand Up For California* suggests regulatory language created must include:

- Development of regulatory language that provides daylight and oversight to the contractual arrangements between card clubs and TPPPS companies. The suggestion of a flat-fee measured by the number of tables that a TPPPS company provides service too is a good beginning. Since there is a significant difference between clubs with 2 tables compared to 200+ tables, perhaps creating a tiered flat-fee dependent on the total number of table games offered by the gaming facility and serviced by the TPPPS contract may provide a more equitable fee schedule structure for clubs of varying size.
- TPPPS companies are supposed to maintain “Playbooks” that account for the amount of money they wager, win and lose. The CGCC must develop a well-defined audit methodology regarding the “Playbook” and require scheduled audit periods.
- Collection of table fees from every player by card clubs in order to be consistent with statute and regulation either per-hand or by-the-hour. Fees charged by the

³ There has been a prohibition on banked card games since 1860. Banked games allow players to bet against the gambling establishment. California allows players to bet against each other and pay the card club a fee per hand or hour for the table. But what was the intent of the 1860 prohibition. Does it mean just the house (the card room) is prohibited from conducting banked games in their own establishments? Or does the prohibition apply more broadly to “all banked games,” including those banked by third party proposition player companies? Was the intent to allow round or pari-mutuel games, such as poker, but not banked games like blackjack, which is also statutorily banned? In June of 1999, the California Supreme Court ruled on the *HERE v Davis* case. This was the successful challenge to the Proposition 5, a statutory ballot measure that included banked or house banked games for federally recognized California Indian tribes on established Indian lands. The Supreme Court held that: A banking game is one in which any person or entity takes on all comers, paying all winners and collecting from all losers. Under the Supreme Court’s analysis, Penal Code Section 330’s prohibition against banking games applies even if the house does not own the bank. Further the Supreme Court held that: Article 4 Section 19 (e) of the California Constitution elevated the Penal Code Section 330 to a constitutional level. Accordingly the Legislature may not authorize any game that would constitute casino gambling. In 2001, AB 54 was introduced as a technical “clean up legislation.” What did this clean-up legislation authorize? A limited role for player/dealer positions to continuously and systematically rotate amongst each of the participants during the play of the game or banked games for proposition player companies to act as banks for card clubs?

club are separate and apart from a TPPPS contract. Collection of table fees is evidence of how much money the club is making.

In October of last year *Stand Up For California* sent Public Request Acts (PRA) to several card club cities in the Sacramento and San Jose areas. Many city governments had no information on TPPPS contracts. However, the PRA sent to the City of San Jose caused the Garden City Card club to sue the City of San Jose to prevent a response to the PRA. What seemed so unusual was that the City decided to first check with the card club before responding to the PRA. As a watchdog, the immediate thought was the card club and TPPPS contract was hiding something other than proprietary information that could be redacted.

The CGCC must develop and use a simple methodology based on objective and factual criteria in the evaluation of TPPPS company contracts with card clubs. Again, I hope this is helpful and useful information to the Commission in their efforts to develop a well-reasoned regulation that ensures the integrity of the industry and protects the best interests of the public/patrons and at the same time keeps government free from corruption.

Sincerely,

A handwritten signature in blue ink that reads "Cheryl Schmit". The signature is fluid and cursive, with the first name "Cheryl" and last name "Schmit" clearly legible.

Cheryl Schmit, Director
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CC: CGCC Commissioners