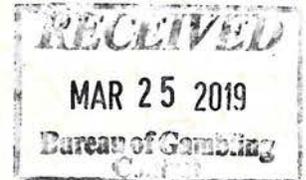




March 20, 2019

Stephanie Shimazu  
Dept. of Justice  
Bureau of Gambling Control  
Attention: Regulations  
P.O. Box 168024  
Sacramento, CA 95816



RE: Cardroom Rotation of the Player-Dealer Position

Dear Ms. Shimazu:

Thank you for the opportunity to submit written comments on the issue of rotation of the player-dealer position within California cardrooms.

California tribes have been complaining about illegal gaming at cardrooms for at least 7 years. We joined in the conversation in 2015. Rather than restate our previously asserted positions, I am enclosing copies of our 2016 letters sent to Bureau Chief Wayne Quint, Jr.

The rules of virtually every card game approved by the Bureau of Gambling Control include a provision that the player-dealer position must rotate in a continuous and systematic way so that no one player may serve as the player-dealer for more than two consecutive hands. It seems very clear to us that cardrooms are not following approved game rules, and are violating prohibitions set forth in the California Constitution, by allowing Third Party Proposition Players to maintain the player-dealer position for more than two hands. The real issue here, however, is what happens if after two hands, no player accepts the player-dealer position?

In June 2016, a notification to cardrooms, (which was later found to be an underground regulation) states that the player-dealer position had to be offered to each player at the table and that no one person could continuously serve as the player-dealer for more than 60 minutes, at which time the games must stop for two minutes.

At a full blackjack table, which is the equivalent to the games being played in cardrooms, an average of 60 hands per hour is dealt. Requiring rotation of the player-dealer position once

every 60 hands is simply not consistent with the language in the approved rules, which require rotation every two hands.

If the Bureau of Gambling Control is going to use a timeout rule if no one at the table accepts the deal, it makes more sense to insert the 2 minute timeout every two hands, which is the average time it would take to deal two hands. In addition, the dealer should shuffle the cards and restart the game.

In addition, to ensure that all players are on a level playing field, players should pay their own collection on par with the dealer-player and TPPs should not be permitted to subsidize the collections.

On another note, deceptive advertising is also an issue at cardrooms. A CGCC rulemaking workshop was held on December 4, 2018 and at least one more is to be held in 2019 to address this issue; however, in the meantime Business and Professions Code 19841(f) requires CGCC regulations to "Provide for the disapproval of advertising by licensed gambling establishments that is **determined by the department** to be deceptive to the public. It is the Department of Justice, and ostensibly the Bureau of Gambling Control's, responsibility to investigate and make the initial determination that cardroom advertising is deceptive. While you are conducting workshops across the state, the Magnolia House Casino was licensed and opened in Rancho Cordova. The opening was covered by local media on the Good Day show on Channel 31. There were signs on at least two gaming tables that clearly said "Blackjack". Apparently the owner found no reason to even attempt to legitimize the games, since the Bureau of Gambling Control continues to turn a blind eye to illegal gaming at California cardrooms.

We realize that this is a difficult undertaking but we are hopeful that you can find a reasonable solution to this problem.

Respectfully,



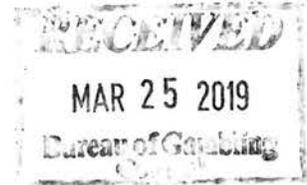
Edwin "Thorpe" Romero  
Chairman



April 15, 2016

VIA ELECTRONIC AND U.S. MAIL

Wayne J. Quint, Jr.  
Bureau Chief  
Bureau of Gambling Control  
Department of Justice  
P.O. Box 168024  
Sacramento, California 95816-8024



**RE: ROTATION OF BANKER POSITION IN CALIFORNIA CARDROOMS**

Dear Mr. Quint:

We write to thank you and your staff for meeting with us on March 21, 2016 to discuss the rotation of the "banker" position in California cardrooms. This meeting resulted from the Bureau's February 19, 2016 notice to the cardrooms that it was suspending the so-called "Lytle letter" which allowed cardrooms to offer the rotation of the banker position, rather than insist on actual rotation as Penal Code section 330.11 requires.

We also want to provide the Bureau with written comments from the tribes we represent on the subject of game rotation and to respond to the inquiry at the meeting about the tribes' view of a "game break" should the banker position fail to rotate.

**1. THE LEGAL FRAMEWORK**

We believe it important to first to set out the applicable legal framework. The most elemental point is that Penal Code section 330 prohibits "banking . . . games played with cards." As the California Supreme Court has explained, this prohibition is elevated

to Constitutional status, because the type of games operating in Nevada and New Jersey include banked table games. *Hotel Empl. & Rest. Empl. Int'l. Union v. Davis*, 21 Cal. 4th 585, 605-06 (1999). The term “banking game,” in turn, “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).

Under Penal Code section 330.11, games are “banked” unless the rules of the game feature a “player-dealer” – or banker – position that is “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.” This means that even if someone *other* than the cardroom (such as a Third-Party Proposition Player (“TPP”)) is operating as the “player-dealer” and the position does not rotate, the game is an illegal banked game. *Davis*, 21 Cal. 4th at 608 (an illegal banking game includes a game “banked by someone other than the owner of the gambling facility.”); *Oliver v. County of Los Angeles*, 66 Cal. App. 4th 1397, 1408 (1998).

## 2. AN “INDUSTRY STANDARD” FOR BANKER ROTATION ALREADY EXISTS

We understand the purpose of the Bureau’s current effort is to devise a definition for the term “continuously and systematically rotated” in section 330.11 so the Bureau and industry will have guidelines to avoid the illegal play of games that is currently occurring. We fully support – indeed, believe it is critical to have – a single firm, inflexible standard for game rotation in cardrooms. That way, the Bureau’s game approval staff will have no problem determining whether or not a set of rules submitted by a cardroom are legal – the rules either comply with the standard or they do not.

As we explained at our meeting, however, the Bureau can save itself the trouble of going through this definitional process, because that single, firm and inflexible standard already exists. To reach this conclusion, we examined *every* blackjack and baccarat rule on the Bureau’s website. This was no minor task. The website contains 208 blackjack game rules for 72 cardrooms, 122 baccarat rules for 50 cardrooms, and 7 of the Bureau’s own “Standard Game Rules” (3 blackjack, 4 baccarat).<sup>1</sup> The results of this review were highly instructive.

With respect to blackjack, *every single rule except for four* (that is, 204 out of 208, or 98 percent) provides that the player-dealer position must be offered or actually rotate every two hands. Here is a typical example of the rotation language (this from the Bicycle Casino’s No Bust 21st Century Blackjack 5.0):

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<sup>1</sup> It appears there are actually 209 sets of blackjack rules. The Bureau’s link to the rules for Casino Real in Manteca indicates that cardroom plays Pure 21.5 Blackjack, but the rules were incomplete.

**LEGAL**

The Player-Dealer position must rotate in a continuous and systematic fashion, and cannot be occupied by one person for more than two consecutive hands. There must be an intervening player-dealer so that no single player can continually occupy the player-dealer position within the meaning of *Oliver v. County of Los Angeles* (1998) 66 Cal. App. 4<sup>th</sup> 1397, 1408-1409. If there is not an intervening person occupying the Player-Dealer's position, the game will be "broke" or stopped, as required by the California Penal Code.

Of the four blackjack rules that do not have the two hand rotation language, one (for Normandie Casino) is obviously an old and superseded version, and the other three (one for Lucky Lady and two for the Oaks) reference the *Oliver* decision, note that the banker position must rotate in a systematic and continuous fashion, and require that the game be "disbanded if at least one other intervening player at the table does not accept the deal when offered."

With respect to baccarat, the results are just as remarkable. Out of the 122 game rules, 104 (or 85 percent) explicitly require two hand rotation and the rest state that rotation of the banker position is "the same as industry standard games and complies with 330.11 of the California Penal Code." To ensure there is no doubt about what that standard is, a number of the 104 game rules requiring rotation every two hands *also* contain the "industry standard" provision. Moreover, it is evident the game rules tie the two hand industry standard to the *Oliver* decision and Penal Code section 330.11. Below is an example of the relevant language (from Artichoke Joe's EZ Baccarat):

**Standards of Play**

The game features a rotating player/dealer position that collects from all losers and pays all winners to the extent that their wager covers the action. The rotation of the Player/Dealer position is the same of industry standard games and complies with 330.11 of the California Penal Code. The object of the game is to form a hand that equals nine (9) or as close to it as possible. The player's hand is compared with the player/dealer's hand. The hand closest to "9" wins.

\* \* \*

**PLAYER-DEALER & DEAL**

The player/dealer position rotates in a systematic and continuous way so that the opportunity to act as the player/dealer does not constantly remain with a single person for many hands. The person in player/dealer position may not act as player/dealer position more than two consecutive hands or rounds of play. The opportunity to act as the player/dealer must be offered to all seated players after two hands or rounds of play so that a single player cannot repeatedly act as the player/dealer within the meaning of *Oliver v. County of Los Angeles*, (1998) 66 Cal.App.4<sup>th</sup> 1397, 1408-09 or section 330.11 of the California Penal Code, relating to gambling establishments and any future regulatory guideline from the California Bureau of Gambling Control or the California Gambling Control Commission with respect to the operation of controlled games featuring a player/dealer position.

The Bureau obviously agrees the “industry standard” for rotation of the banker position is two hands. *Every single one of the Bureau’s Standard Game Rules* explicitly references two hand rotation, and, as is the case with many of the cardroom rules, the Bureau’s EZ Baccarat rules tie that number to the “industry standard,” the *Oliver* decision, and section 330.11.

We trust the point is by now obvious: The cardrooms and Bureau over the years have reached an agreement over the meaning of “continuously and systematically rotated” and that meaning is – unequivocally – two hands. Though, as explained below, the tribes believe the Penal Code should be read to require rotation *every hand*, they are willing to accept the standard the industry has reached. Thus, to return to the initial contention, the Bureau need take no further action with respect to the term the industry (with the Bureau’s input) has already defined. The Bureau simply needs to fully withdraw the offending Lytle letter and let the games play by the rules already in force. Where a rule provides for the offer of the banker position, the parties simply need to read that out of the rule and require actual rotation. We note that Bureau representatives have explained on a number of occasions over the last few years (including during Gambling Control Commission hearings and in testimony before the Legislature) that the Bureau is severely underfunded and overburdened. We therefore think it ill advised and counterproductive for the Bureau to engage in a long, time-consuming and personnel intensive process to define a term that already benefits from a definition to which all stakeholders agree.

During our March 21 meeting, you suggested it would be unfair to force the cardrooms to adhere to a two hand rotation, because for nine years – that is, since the December 2007 Lytle “offer” letter was issued – they have been allowed to avoid that standard. There are two responses to your suggestion. First, the Bureau’s failure to enforce Penal Code section 330.11 for almost nine years does not “grandfather” the cardrooms into a pass for violating that statute. We also need to keep in mind it has been four years now (April 12 is the anniversary date) since the tribes began formally complaining about the illegal conduct at the cardrooms and the Bureau’s failure to stop it.

Second, the Lytle letter was, from the day it was issued, an obvious fraud. As the Bureau detailed in its December 2014 formal accusation against Lytle, “prior to December 4, 2007” – that is, a few days before he sent the “offer” letter to the presidents of two cardroom associations – he entered into “negotiations with [a San Jose cardroom] concerning prospective engagement as its compliance director.” Then, “on December 30, 2007, [Lytle] retired from state service” and the next day “entered into the agreement that had been negotiated since before December 4, 2007.” Thus, reduced to its essence, it appears Lytle negotiated for employment at a cardroom while still the Bureau Chief, then issued the letter providing cardrooms the ability to skirt the law on game rotation, and a few days later left to work at a cardroom. We think little more needs to be said about that situation.

### 3. THE BANKER POSITION ROTATION CANNOT EXCEED TWO HANDS

Even if the industry standard did not exist, and the Bureau believes it must continue in its effort to define the term “continuously and systematically rotated” in section 330.11, the result must still be nothing *more* than two hands. An important point to keep in mind at the outset is that the Bureau has no authority to expand the realm of legal gaming in the state. As the Gambling Control Act explains (Bus. & Prof. Code § 19801(a)):

State law prohibits commercially operated . . . banked . . . games . . . To the extent that state law categorically prohibits certain forms of gambling . . ., nothing herein shall be construed, in any manner, to reflect a legislative intent to relax those prohibitions.

Thus, because there is no express definition of the term “continuously and systematically rotated,” the Bureau’s interpretation must give full effect to the Legislature’s intent to maintain the prohibition on banked games and must in no way relax that prohibition.

In trying to construe a statute, the “fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute . . . We begin by examining the statutory language, giving the words their usual and ordinary meaning. . . If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.” *Burquet v. Brumbaugh*, 223 Cal. App. 4th 1140, 1145-46 (2014). “When attempting to ascertain the ordinary, usual meaning of a word [in a statute], courts appropriately refer to the dictionary definition of that word.” *Wasatch Prop. Mgmt. v. Degrate*, 35 Cal. 4th 1111, 1121-22 (2005) (relying on Oxford English Dictionary to define “terminate” in housing statute); *Burquet*, 223 Cal. App. 4th at 1146 (relying on Oxford English Dictionary to determine meaning of word “disturb” and “peace” in statute).

The Oxford English Dictionary defines the word “continuously” as: “In a continuous manner; uninterruptedly, without break; continually, constantly.” As we explained at the March 21 meeting, we think this definition leaves room for only one interpretation – the banker position must rotate every hand. There simply is no rational basis for concluding that anything beyond rotation every hand qualifies as “continuous,” “uninterrupted” or “without break.” That said, we conceded at the meeting that the tribes could accept the two hand rotation standard, because we understand its origin. As we discussed, the two hand rotation standard emanates from the *Oliver* decision, though that case did not discuss section 330.11’s “continuously and systematically” language. There, the court held that the game of Newjack was a prohibited banking game, because while its rules provided the option of rotating the banker position every two hands, it did not require that the rotation actually occur. The obvious logical inference is that, had the

game rules required the two hand rotation, the court would have found the game legal. Though we believe a court analyzing section 330.11's language would find that "continuous" rotation must mean every hand, no such decision yet exists. Thus, as a concession, the tribes are willing to accept the two hand standard. As the above demonstrates, rotation of the banker position every hand or every two hands are the *only* legally defensible and non-arbitrary standards. If the Bureau believes otherwise, we request that you provide us the legal basis for your position.

A less contentious issue is the definition of "systematically." The Oxford English Dictionary defines that term, in relevant part, as: "In a systematic manner; according to a system or organized plan; regularly and methodically." We take this to mean that the rotation of the banker position must follow a pre-established system, such as clockwise rotation from player to player. Please let us know if you believe the Bureau would benefit from additional input regarding this term.

#### 4. THE MEANING OF A "GAME BREAK"

We next address the question you and your staff raised at the March 21 meeting: What happens when the banker position fails to rotate? A related consideration, which your staff also raised, is how to apply the language from section 330.11 providing that the Legislature did not intend "to mandate acceptance of the deal by every player if the [Bureau] finds that the rules of the game render the maintenance of or operation of a bank impossible by other means."

We agree that every player at a cardroom gaming table need not take the banker position. If they do not, however, it is the *Bureau's responsibility* to ensure it is impossible for the current situation at cardrooms to exist, namely, where only one player, the TPP, engages in the "maintenance of or operation of a bank." With this in mind, we think the answer to the "game break" question is the following: After the TPP at a California cardroom has held the banker position for two hands, the game must stop, and cannot begin again, unless and until another player who has no business relationship with the cardroom or a TPP takes the banker position. The point here is that at least one regular customer – someone who does not work for a TPP or the cardroom – must take the banker position after the TPP has held it for two hands.

Thus, if there are seven individuals, including a TPP employee, playing at a table, the game would not be illegal if at least one regular customer takes the banker position every two hands. It bears stressing that this customer must have no business relationship with the prior banker or the cardroom. Otherwise, a creative cardroom owner might have two TPPs at each table and allow the bank to go between them. There would be, however, no substantive difference between that situation and what currently occurs at cardrooms. Moreover, whatever guidelines the Bureau devises must prohibit "back-banking" by TPPs. Again, there would be no substantive change from the current illegal

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situation if the TPP, rather than the customer, in effect “tak[es] on all comers, paying all winners, and collecting from all losers.” *Sullivan*, 189 Cal. App. 3d at 678.

Again, thank you for hosting the March 21 meeting. We heartily encourage the Bureau to do whatever is necessary to ensure cardrooms comply with California law with respect to game rotation. It is important to keep in mind the tribes’ overarching point here: The tribes have the legal right to play banked games, the cardrooms do not. Thus, there must be a distinct difference between the play of games offered in tribal facilities compared to those offered in card rooms. That distinction, however, has not existed for a number of years. The outcome of Bureau’s current process must be to restore that distinction. The current illegal situation has persisted far too long.

We look forward to the next opportunity to meet with Bureau to further this important discussion. If you need any additional input from the tribes in the meantime, please let us know.

Sincerely,



John T. Plata  
General Counsel  
Agua Caliente Band of  
Cahuilla Indians



Kathryn Clenney  
General Counsel  
Barona Band of Mission  
Indians



Steve M. Bodmer  
General Counsel  
Pechanga Indian  
Reservation



Michelle Carr  
Attorney General  
Sycuan Band of Kumeyaay  
Indians



Dan Casas  
Legal Counsel  
Table Mountain Rancheria



Tuari Bigknife  
Attorney General  
Viejas Band of Kumeyaay  
Indians



Jeffrey Butler  
Attorney for the  
Yocha Dehe Wintun Nation

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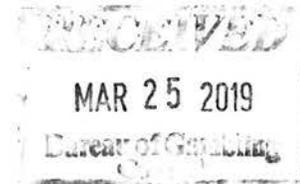
cc: Yolanda Morrow, Assistant Bureau Chief  
Department of Justice



November 7, 2016

VIA ELECTRONIC AND U.S. MAIL

Wayne J. Quint, Jr.  
Bureau Chief  
Bureau of Gambling Control  
Department of Justice  
P.O. Box 168024  
Sacramento, California 95816-8024



**RE: ROTATION OF BANKER POSITION IN CALIFORNIA CARDROOMS**

Dear Chief Quint:

We write to express our disappointment with the Bureau of Gambling Control's June 30, 2016 "guidelines" for the rotation of the banker position in California cardrooms.

In April 2012, when tribal representatives first raised illegal gaming concerns with the State, a primary complaint was the cardrooms' violation of Penal Code section 330.11 by failing to rotate the banker position "continuously and systematically" as that statute requires. The cardrooms' failure to rotate the banker position is a direct result of the Bureau's unwillingness or inability to enforce the very two-hand rotation rules it has approved. Anything other than the continuous and systematic rotation of the banker position results in an illegal banked game.

Throughout the last four years, we have emphatically reiterated this point. We hoped progress was occurring when, during our February 12, 2016 face-to-face meeting, the Attorney General informed us the Department of Justice would suspend (rather than

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withdraw) the Lytle letter and the Bureau would begin a process that would lead to banker rotation guidelines no later than June 30, 2016. During that meeting the Attorney General confirmed this process was intended to: (1) define the meaning of the term “continuously and systematically rotated” in Penal Code section 330.11, and (2) definitively highlight the distinction between games offered in California cardrooms and those offered in tribal casinos. Neither of these intended outcomes has occurred as of this date.

The June 30 rotation guidelines do not even mention the word “continuously.” Rather, the guidelines claim the “relevant part” of Penal Code section 330.11 is the one stating that “acceptance of the deal by every player is not mandated.” That is not the statute’s “relevant part.” The principal issue is not who accepts the banker position, but rather how frequently that position must rotate.

Prior to the completion of the Bureau’s new guideline process our representatives wrote to you on April 15, 2016 to explain in detail the tribes’ position on game rotation (a copy of that letter is enclosed for your convenience). We demonstrated that almost every blackjack and baccarat rule on the Bureau’s website requires rotation (or the offer of rotation following the Lytle letter) every two hands. That irrefutable fact establishes a Bureau-endorsed and long-accepted cardroom industry standard for the meaning of “continuous and systematic” rotation. The Bureau’s new guidelines, however, find that rotation of the banker position is appropriate if it occurs once every hour. Between fifty and sixty hands of blackjack and forty and fifty hands of baccarat can be dealt per hour at a table. Thus, the Bureau has effectively converted a long-standing cardroom industry standard of rotation every two hands into a new standard of rotation every fifty hands. There is no justification for this radical change (other than to put the State’s seal of approval on the cardrooms’ continued violation of California law). We are confident no reasonable person would argue that rotation of the banker position every fifty hands equals “continuous” rotation, especially given the well-established two-hand rotation standard.

Moreover, the “remedy” in the new guidelines for a cardrooms’ failure to rotate the banker position once an hour is illusory. As the guidelines teach, when a cardroom chooses to ignore the once-an-hour rotation, it must only stop the game for two minutes, during which it will shuffle the cards and cover the chips. After the two minutes pass, the very same third party proposition player who held the banker position during the prior hour and violated the once-an-hour rotation requirement can go back to doing exactly that for the next hour, and so on indefinitely. This is no remedy and these are still banked games. It is hardly surprising, then, that Richard Schuetz, the former CGCC Commissioner, commented in an article that he was surprised the Bureau “didn’t insist the players stand up at the game and spin around twice before sitting back down after the two-minute break.”

That said, the cardrooms need not ignore the once-an-hour rotation requirement, because that requirement is no burden on them at all. All the cardrooms have to do is hire a “roving” third party proposition player to sit at each table once an hour and accept

a single hand as the banker, and then it is back to business as usual. The most difficult thing for the cardrooms (and the Bureau) to track under the new regime will be to figure out when the hour expires at each table.

We strongly urge the Bureau – an arm of the Department of Justice – to not participate in a scheme by which the cardrooms evade what the law plainly requires. Here, what the Bureau is doing is even more egregious than that, because the Bureau actually created and is now perpetuating a system through which cardrooms engage in illegal gaming. This began in December 2007 when the appalling Lytle letter provided cover for the cardrooms to illegally stop rotating the banker position in favor of just offering it. With respect to that letter, the Bureau could deny it had knowledge of its less-than-respectable origin. That defense is no longer available to the Bureau. Now, the Bureau has officially enabled and sanctioned the cardrooms' play of plainly illegal banked games.

We again ask the Department of Justice, through the Bureau, to enforce the law and respect the tribes' exclusive right to offer these banked games.



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Jeff Grubbe  
Tribal Chairman  
Agua Caliente Band of  
Cahuilla Indians



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Clifford M. LaChappa  
Tribal Chairman  
Barona Band of Mission  
Indians



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Mark Macarro  
Tribal Chairman  
Pechanga Band of  
Luiseno Indians



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Cody J. Martinez  
Tribal Chairman  
Sycuan Band of the  
Kumeyaay Nation



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Leann Walker Grant  
Tribal Chairperson  
Table Mountain Rancheria



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Robert J. Welch, Jr.  
Viejas Band of  
Kumeyaay Indians



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Leland Kinter  
Tribal Chairman  
Yocha Dehe Wintun Nation

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November 7, 2016  
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Enclosure