

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules of the
Minnesota Gambling Control Board
Governing Lawful Gambling, Primarily
Raffle Boards, Bingo Boards, Multiple
Chance Games and Other Lawful
Gambling Provisions

**ORDER OF THE CHIEF
ADMINISTRATIVE LAW JUDGE**

This matter came before the Chief Administrative Law Judge pursuant to the provisions of Minn. Stat. § 14.26 (2014). Based upon a review of the record in this proceeding, the Chief Administrative Law Judge hereby approves in all respects the findings in the Report of the Administrative Law Judge dated June 27, 2016.

In order to correct the defects enumerated by the Administrative Law Judge in the attached Report, the agency shall make changes to the rule to address the defects noted, or submit the rule to the Legislative Coordinating Commission and the House of Representatives and Senate policy committees with primary jurisdiction over state governmental operations, for review under Minn. Stat. § 14.15, subd. 4 (2014).

If the agency chooses to make changes to correct the defects, it shall submit to the Chief Administrative Law Judge a copy of the rules as originally published in the State Register, the agency's order adopting the rules, and the rule showing the agency's changes. The Chief Administrative Law Judge will then make a determination as to whether the defect has been corrected and whether the modifications to the rules make them substantially different than originally proposed.

Dated: July 1, 2016



TAMMY L. PUST
Chief Administrative Law Judge

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules of the
Minnesota Gambling Control Board
Governing Lawful Gambling, Primarily
Raffle Boards, Bingo Boards, Multiple
Chance Games and Other Lawful
Gambling Provisions

**ORDER ON REVIEW OF
RULES UNDER
MINN. STAT. § 14.26**

The Minnesota Gambling Control Board (Board) is seeking review and approval of amendments to Minnesota Rules, Chapters, 7861, 7863, 7864, 7865 (2015), which were adopted by the agency pursuant to Minn. Stat. § 14.26 (2014). On June 13, 2016, the Office of Administrative Hearings received the documents that must be filed by the Board under Minn. Stat. § 14.26 and Minn. R. 1400.2310 (2015). Based upon a review of the written submissions and filings, and application of law,

IT IS HEREBY DETERMINED:

1. The Board has the statutory authority to adopt the rules.
2. With the exceptions noted below, the rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14 (2014), and Minnesota Rules, Chapter 1400 (2015).
3. The record demonstrates the rules are needed and reasonable, except as noted below.
4. The following rule parts are **DISAPPROVED** as not meeting the requirements of Minn. R. 1400.2100, items B, D and G; Minn. R. 7861.0210, subp. 10a, and Minn. R. 7864.0230, subp. 1, item A.
5. All other proposed rule parts are **APPROVED**.

Dated: July 1, 2016



JIM MORTENSON
Administrative Law Judge

MEMORANDUM

Pursuant to Minn. Stat. § 14.26, the Board submitted these rules to the Administrative Law Judge for review as to legality. No requests for a public hearing were made, so the rules were adopted without a public hearing pursuant to Minn. R. 1400.2300. Because two of the rules are disapproved, the written reasons for the disapproval are submitted to the Chief Judge for review pursuant to Minn. R. 1400.2300, subp. 6.

Minnesota Rules Part 1400.2100 identifies several types of circumstances under which a rule must be disapproved by the Administrative Law Judge or the Chief Administrative Law Judge. These circumstances include:

- (1) The rule was not adopted in compliance with the procedural requirements of Minn. Stat. Chap. 14 or other law or rule, unless the judge decides that the error was harmless and should be disregarded;
- (2) The rule is not rationally related to the agency's objective or the record does not demonstrate the need for or reasonableness of the rule;
- (3) The rule is substantially different from the proposed rule and the agency did not follow the procedures of Minn. R. 1400.2110;
- (4) The rule exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by, its enabling statute or other applicable law;
- (5) The rule is unconstitutional or illegal;
- (6) The rule improperly delegates the agency's powers to another agency, person or group;
- (7) The rule is not a "rule" as defined in Minn. Stat. § 14.02, subd. 4, or by its own terms cannot have the force and effect of law; or
- (8) The rule is subject to Minn. Stat. § 14.25, subd. 2, and the notice that hearing requests have been withdrawn and written responses to the notice show that the withdrawal is not consistent with Minn. Stat. § 14.001, clauses (2), (4) and (5).¹

Two of the rule parts presented for review contain substantive defects, as addressed below.

Minn. R. 7861.0210, subp. 10a.

Minn. R. 7861.0210, subp., 10a defines a "CEO." The subpart states:

"CEO" means the person who has authority for an organization's management and operations according to the organization's bylaws, and:

- A. who has paid all dues to the organization;
- B. who is 18 years of age or older;
- C. who has voting rights on all organization issues;

¹ Minn. R. 1400.2100.

- D. who has equal rights and responsibilities of attendance at the regularly scheduled meetings of the organization; and
- E. whose name and membership origination date appear with the CEO's knowledge and consent on a list of members of the organization.

The Board has the authority under Minn. Stat § 349.151 (2014), “to make rules authorized by this chapter[,]”² such as regulating “lawful gambling to ensure it is conducted in the public interest.”³ “In addition to any authority to adopt rules specifically authorized under [Minn. Stat. Chapter 349], the board may adopt, amend, or repeal rules under chapter 14, when necessary or proper in discharging the board’s powers and duties.”⁴

According to the Statement of Need and Reasonableness, the Board wants to define CEO because:

Lawful gambling licensure requires chief executive officer (head of the organization) information. Experience has shown that lawful gambling organizations define the heads of organizations in their bylaws by different titles (president, chair, director, etc.). This definition encapsulates the head of an organization as defined in an organization’s bylaws as CEO for licensing purposes. This definition is reasonable because it brings the different titles of the head of an organization under one definition for purposes of lawful gambling licensure.

There are two problems with this rule. First, the rule dictates how an organization must define a CEO in its bylaws. Under statute, an organization is “any fraternal, religious, veterans, or other nonprofit organization.”⁵ Minn. Stat. §§ 349.167-.168 (2014) specifies that organizations licensed to conduct lawful gambling must have a gambling manager and registered gambling employees. The Board does not have authority to regulate the duties, functions, or requirements of chief executive officers of organizations. While the statute defines “active member” of an organization as someone who meets the same requirements as those listed under Minn. R. 7861.0210, subp. 10a,⁶ it does not provide any other requirement for the leadership of the organization, including the qualifications of the head of the organization or a requirement that a head of an organization must be an active member of the organization.⁷ Thus, the definition exceeds the Board’s authority under the statute because it effectively requires organizations to set the powers of their CEOs pursuant to the Board’s definition.

² Minn. Stat. § 349.151, subd. 4(a)(5).a

³ *Id.* at subd. 4(a)(1).

⁴ *Id.* at subd. 13.

⁵ Minn. Stat. § 349.12, subd. 28 (2014).

⁶ See Minn. Stat. § 349.12, subd. 2 (2014).

⁷ The statute does define “gambling manager” as a person who, among other things, must have been “an active member of the organization for at least the most recent six months at the time of the application for a gambling manager license[.]” Minn. Stat § 349.12, subd. 19 (2014).

Second, the Board does not state a reason why the CEO must meet the specified requirements or otherwise be an active member of the organization. While it is reasonable for the Board to use the term “CEO” and define it for licensing purposes, including stating that it wishes to capture heads of organizations “as defined in an organization’s bylaws[,]” the definition should end there. The requirement that the CEO be, effectively, an active member of the organization is not rationally related to the Board’s objective of ensuring lawful gambling is conducted in the public interest, or that the rule is necessary or proper in conducting its duties. This is highlighted by the fact that there is a statutory requirement for a gambling manager to have been “an active member of the organization for at least the most recent six months at the time of the application for a gambling manager license[.]”⁸ The proposed definition therefore goes further than the Board’s stated reason in defense of it.

One way to correct this defect is to delete all language following “bylaws” in lines 1.11, through 1.18. This would remove the requirement that the CEO be an active member of the organization, while still permitting the Board to define CEO as the head of an organization as defined by the organization’s bylaws.

Minn. R. 7864.0230, subp. 1, item A.

Rule 7864.0230, regulates the manufacturer standards for lawful gambling equipment other than electronic pull-tabs. Subpart 1, item A, has been amended to read:

To obtain prior board approval for paper pull-tab and tipboard games and promotional paper pull-tab or tipboard tickets, raffle board, and bingo boards, a manufacturer must submit to the director a deal of tickets; flare, and prize pool board and chance ticket display, if any; raffle board; and bingo board that has been produced to comply with the manufacturing standards prescribed in this chapter. The director may request additional information to determine compliance.

The last sentence added to the regulation is not a rule as defined in Minnesota Statutes, section 14.02, subdivision 4. A rule must be “adopted to implement or make specific the law enforced or administered by [an] agency....”⁹ This provision fails to specify the type of additional information the director may request to make a compliance determination. Without such specificity, the rule fails to furnish “a reasonably clear policy or standard of action[.]”¹⁰

There are two possible solutions to correct this defect. The sentence could be removed. Alternatively, the “additional information” could be specified so that manufacturers and the Board will be apprised of what constitutes a reasonable request for information.

⁸ Minn. Stat. § 349.12, subd. 19.

⁹ Minn. Stat. § 14.02, subd. 4.

¹⁰ *Lee v. Delmont*, 36 N.W.2d 530, 538 (Minn. 1949).

This order and memorandum describing the reasons for disapproval of the two rule subparts is submitted to the Chief Administrative Law Judge for review, pursuant to Minn. R. 1400.2300, subp. 6. The Chief Administrative Law Judge will approve or disapprove this determination within five working days, and will state her reasons in writing, advising the Board what changes, if any, are required for approval.

J.R.M.