

April 2, 2019

VIA E-FILING

Hon. James E. LaFave
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
St. Paul, MN 55164-0620

Re: Response of the Shakopee Mdewakanton Sioux Community Related to
Comments Submitted by the Minnesota Gambling Control Board in OAH
Docket No. 60-9017-35616; Revisor's ID 4555

Dear Judge LaFave:

On behalf of the Shakopee Mdewakanton Sioux Community ("the Community"), I submit the following response to the written comments of the Minnesota Gambling Control Board ("the Board") in Docket No. 60-9017-35616. In Section A of this response, I will focus on the Board's comments related to Part 7861.0270, Subp. 3a, Part 7863.0270, subp. 18a, and 7864.0230, Subp. 6. In Section B, I will focus on the Board's comments related to Part 7861.0235, Subp. 4, and in Section C, will respond to the Board's comments relating to Part 7864.0235, Subp. 18.

A. Part 7861.0270, Subp. 3a; Part 7863.0270, Subp. 18a; and Part 7864.0230, Subp. 6

These proposed rules authorize the use of animated win determinations in electronic bingo games. In support of inclusion of animated win determinations, the Board argues that the statutory requirements and prohibitions placed on electronic bingo devices should not be applied to electronic linked bingo games themselves. This contention is unreasonable because it ignores explicit statutory guidance and leads to an absurd result.

Minn. Stat. 349.12, Subd. 12a provides the statutory definition of electronic bingo devices. It provides, among other things, that such devices may have no additional functions as an amusement or gambling device other than as an electronic pull-tab game.

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The Board's contention that the requirements of Minn. Stat. 349.12, Subd. 12a do not apply to the electronic bingo games themselves is unsupported by law. The term "electronic bingo game" is undefined in statute. In fact, the only statutory guidance that electronic bingo games must follow is provided in Minn. Stat. 349.12, Subd. 12a. It is unreasonable to ignore explicit statutory guidance and to create different requirements for a term, electronic bingo game, that is undefined in statute.

The Board's position also relies on the fiction that game play for electronic bingo games is not discussed in statute. Minn. Stat. 349.12, Subd. 12a(1) details exactly how electronic bingo devices can be used to play electronic bingo games. It provides that electronic bingo devices shall be used by a bingo player to: play an electronic bingo game that is linked with other premises; activate numbers announced or displayed, to compare the numbers to the bingo faces previously stored in the memory of the device; identify winning bingo pattern or game requirements; and play against other bingo players. This provision provides clear guidance on how the results of an electronic bingo game should be displayed.

Minn. Stat. 349.12, Subd. 12a contains provisions clearly meant to govern the use of the device and requirements for game play. If the Legislature did not intend for the requirements of Minn. Stat. 349.12, Subd. 12a to apply to electronic bingo games themselves, it would have included exclusionary language in the statute or, at the very least, would have included a separate definition of electronic bingo games that includes requirements unique from requirements for electronic bingo devices.

Application of the Board's logic to other requirements of Minn. Stat. 349.12, Subd. 12a show that the Board's contention is unreasonable and would lead to absurd results. For example, the same statutory provision that prohibits the use of electronic devices for amusement functions also prohibits the use of such devices as gambling devices. By the Board's logic, this prohibition does not apply to electronic bingo games and such games could be used as gambling devices in any form. Likewise, the requirement of Subd. 12a that bingo be played against other bingo players would not be applicable to electronic bingo games under the Board's logic. Therefore, such games could be played against the computer or game system itself. Both of these examples highlight the absurdity of the Board's contention, and demonstrate that its proposed language is unreasonable.

There are other statutory provisions that support application of Minn. Stat. 349.12, Subd. 12a to electronic bingo games. Subds. 12b and 12c include statutory definitions of electronic pull-tab devices and electronic pull-tab games. These provisions show that the Legislature knows how to create separate statutory definitions for games and devices. Additionally, the only reasonable construction of these provisions is to read

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them together. The requirements placed on electronic pull-tab devices in Subd. 12b apply in conjunction with the requirements for such games in Subd. 12c. With respect to the question at hand, the requirements placed on electronic bingo devices control what can be displayed on electronic bingo games. Animated win determinations are not authorized by statute and run counter to the game play requirements listed in Minn. Stat. 349.12, Subd. 12a(1).

During the hearing, the Community provided video of a game that has already been approved by the Board and is in use in bars in Minnesota. The video itself highlights the error in the Board's interpretation of the statute. The video included a flash bingo game that displayed the results of the bingo game in a fashion similar to a video slot machine. Under the Board's reasoning, this game is legal because the prohibition against using electronic bingo devices as amusement or gambling devices does not apply to electronic bingo games themselves. This would allow the statutory requirements to be ignored as long as the features in question occur in game play.

B. Part 7864.0235, subp. 4

This proposed rule discusses bonus game features. In support of the language, the Board states that bonus features are authorized by statute which allows multiple seal games and cumulative games.

The general authorization for multiple seal and cumulative games in Minn. Stat. 349.1721 does not trump the more specific requirements placed on electronic pull-tab devices and electronic pull-tab games in Minn. Stat. 349.12. Minn. Stat. 349.12, Subd. 12c requires pull-tab games to be facsimiles of pull-tab tickets. Subd. 12b requires the player to activate each electronic pull-tab ticket by individual line, row, or column. In both of these regards, the requirements placed on electronic pull-tab games are more stringent than they are on paper pull-tab games. If bonus games are authorized by statute, they must still conform with the requirements of Minn. Stat. 349.12. This would require the bonus features to be facsimiles of paper pull-tab tickets and require the player to activate each individual line, row, and column. The bonus games in the video played by the Community at the hearing do not look or play like paper pull-tab tickets. Instead, the bonus features are much more akin to video games played on a gaming console.

C. Part 7864.0235, subp. 18

The language in this proposed rule authorizes the use of animated win determinations in electronic pull-tab games. In support of inclusion of animated win

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determinations, the Board argues that the statutory requirements placed on electronic devices in general should not be applied to electronic pull-tab games themselves. This contention is unreasonable because it ignores explicit statutory guidance and leads to an absurd result.

Minn. Stat. 349.12, Subd. 12b includes the statutory definition of electronic pull-tab devices. Minn. Stat. 349.12, Subd. 12c includes the statutory definition of electronic pull-tab games. Minn. Stat. 349.13 includes prohibitory provisions that apply to all electronic game devices, which includes electronic pull-tab devices.

The Board mischaracterizes the Community's objections as applying game requirements for electronic linked bingo devices to electronic pull-tab devices. The Community's testimony at the hearing, as well as a careful reading of the commentary submitted by the Community, shows that the Community relies on Minn. Stat. 349.13, which includes game requirements for all electronic devices.

Minn. Stat. 349.13 governs lawful gambling and limits the types of games that can be played on electronic devices, including electronic pull-tab devices. Minn. Stat. 349.13 excludes application of the Criminal Code to games permitted under Minnesota's lawful gambling laws. The exclusion is premised on games being operated in compliance with statutory requirements. But for the exclusion, electronic pull-tabs would be considered gambling devices under Minnesota law and prohibited. It necessarily follows that games that are not conducted pursuant to statutory law do not fall under the exclusion listed in Minn. Stat. 349.13. If a game does not fall under the exclusion, it would be considered an electronic game of chance and prohibited under the Criminal Code. Minn. Stat. 349.13 prohibits electronic devices from displaying or simulating any other form of gambling or entertainment not authorized by statute. Thus, animated win determinations in pull-tab games would only be allowed if they are authorized and conducted in compliance with statute.

Animated win determinations are not authorized in Minn. Stat. 349.12. Minn. Stat. 349.12 includes clear requirements on what can be displayed on electronic pull-tab devices and games. Minn. Stat. 349.12, Subd. 12c requires that electronic pull-tab games must be facsimiles of pull-tab tickets. Minn. Stat. 349.12b(7) states that electronic pull tab devices may include auditory or visual enhancement as long as such enhancements do not affect the outcome of the game or display the results of the game. At the hearing, the Community provided a video of an electronic pull-tab game that has already been approved by the Board. The graphics included in the video do not display facsimiles of pull-tab tickets but rather, are much more akin to displaying an electronic slot machine.

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The video shown during the hearing also highlighted a serious issue that has resulted from the Board's failure to follow explicit statutory guidance. In the video, the player pressed the play button once and all of the rows and columns of the electronic pull-tab ticket were uncovered. This form of gameplay is in direct contravention of Minn. Stat. 349.12, Subd. 12b(3). Subd. 12b(3) expressly requires the player to activate each individual line, row, or column of an electronic pull-tab ticket.

Conclusion

The Board is tasked with faithfully implementing the statutory requirements placed on electronic devices that are used for lawful gambling. The commentary submitted by the Board and the way the Board has implemented the statute, as portrayed in the videos discussed above, demonstrates that the Board has failed to comply with the statutory requirements. Based on the evidence and arguments submitted by the Community, the Administrative Law Judge should disapprove the rules that are the subject of the Community's objections and grant the relief requested by the Community in its March 28, 2019 Comments.

Sincerely,

s/ Skip Durocher

Skip Durocher

SD:llt