

From: [Murphy, James P.](#)
To: [IGB.DirectorOfPolicy](#)
Cc: [REDACTED]
Subject: [External] Comments or suggestions related to the implementation of a declaratory ruling procedure
Date: Tuesday, August 31, 2021 4:04:05 PM

Dear IGB Director of Policy,

Pursuant to the Notice on the IGB website regarding implementation of a declaratory ruling procedure, we submit the following comments and suggestions:

We believe the Declaratory Ruling procedure must in fairness include the following rules:

1. Every Request for a declaratory ruling should be in writing, identifying and signed by real party in interest, including the IGB license number if applicable
2. The process should be available "with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the IGB."
3. Each Ruling must be in writing and be made public and available on the IGB website
4. A Request must be accompanied by an affidavit that the requestor has given notice of the substance of the petition, the opportunity to file comments with the Commissioner, and the right to request party or intervenor status to any potentially affected party known to the Requestor
5. Within thirty days after receipt of a Request, the IGB will: 1) issue a declaratory ruling; 2) order the matter set for specified proceedings; 3) agree to issue a declaratory ruling by a specified date; 4) decide not to issue a declaratory ruling and initiate regulation-making proceedings on the subject; or 5) decide not to issue a declaratory ruling, stating the reasons for this decision.
6. The IGB must request extension with reasons if not decided within 30 days
7. A Requestor can identify in the Request any Confidential Information not to be publicly released
8. Any resulting declaratory ruling should, upon publication, be binding between the agency and the petitioner on the state of facts alleged, and as against all other similarly situated parties, but every declaratory ruling must be subject to re-hearing and judicial review
9. Requestor can seek re-hearing within 30 days; original ruling is on hold during pendency of or availability of re-hearing

10. IGB must base any declaratory ruling solely on the facts alleged in the Request
11. All facts must be sworn by the requestor
12. The Process should allow intervenors with a bona fide interest in the Request

Thank you for your consideration,

James P. Murphy

Senior Counsel

Clark Hill



From: [Stevens, Kerry Ann Dillon](#)
To: [IGB.DirectorOfPolicy](#)
Cc: [More, Donna B.](#); [Bogot, William](#); [REDACTED]
Subject: [External] Comments regarding Draft Rule
Date: Monday, August 30, 2021 3:49:45 PM
Attachments: [Comments re Draft Rule-C.pdf](#)

Good afternoon,

On behalf of our client, Lucky Street Gaming, and in response to the Board's request for suggested rules regarding the issuance of opinion letters by the IGB, attached please find the proposed rule. We contemplated that perhaps the Board may charge a fee for requesting a general or private ruling letter so as to control the frequency of receiving such requests. We also thought there should be a timeframe for the response to such requests. We are happy to discuss if that is helpful.

Thank you for your time and consideration.

Kerry Stevens

Paralegal

Fox Rothschild LLP



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PROPOSED RULE

Section XXXX.XXX Issuance of General and Private Information Letters

A. General Information Letters

- 1) General Information letters are issued by the Board in response to written inquiries from licensees, licensee representatives, business, trade, industry associations or similar groups.
- 2) General Information letters contain general discussions of gaming principles or Rule applications. General Information letters are designed to provide background on Board interpretations and information on topics of interest to licensees.
- 3) General Information letters are not binding on the Board, may not be relied upon by licensees in taking positions with reference to gaming issues and create no procedural or substantive rights for licensees, nor is a general information letter binding on the requester.
- 4) The Board may respond to all requests for general information letters by issuance of a general information letter, a request for additional information necessary to complete the letter, or by an explanation that the particular request does not fall within the definition of a general information letter along with a description of why the issuance of a general information letter is not appropriate, or by providing copies of pertinent authority such as regulations and statutes.
- 5) The Board shall post all letters of general information it issues on its website.

B. Private Information Letters

- 1) Private letter rulings are issued by the Board in response to specific licensee's inquiry concerning the application of a gaming statute or rule to a particular fact situation. Private letter rulings are binding on the Board only as to the licensee who is the subject of the request for ruling. Prior rulings are considered in responding to future inquiries with similar fact situations.
- 2) A request for a private letter ruling must be made by, or on behalf of, an identified licensee. A request for ruling may be made by a licensee, or by a legal representative of the licensee. The Board will not issue letter rulings to legal representatives for anonymous or unidentified licensees.
- 3) A private letter ruling will not be issued on hypothetical situations.

- 4) Private letter rulings will not be issued to business, trade, industry associations or to similar groups concerning the application of gaming laws to members of the requisite group. Members of such groups may submit suggestions of general issues that would be appropriately addressed in information bulletins, or may submit general questions to be addressed by the Board in a general information letter.
- 5) A private letter ruling will not be issued if, at the time the ruling is requested, the licensee is involved in a disciplinary issue involving the identical issue.
- 6) If there is case law or there are regulations dispositive of the subject of the request, the Board will decline to issue a private letter ruling on the subject.
- 7) Whether to issue a private letter ruling in response to a request is within the discretion of the Board. The Board will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored.
- 8) A request for a private letter ruling must include the following:
 - a) A complete statement of all material facts and other information pertinent to the request. The material facts include the identification of all interested parties, a statement of the business reasons for the request and which portion of the statute or rules the licensee or its representative seeks a ruling. The request must contain an analysis of the relation of the material facts to the issues and relevant law.
 - b) All contracts, licenses, agreements, instruments or other documents relevant to the request.
 - c) A statement that, to the best of the knowledge of both the licensee and the licensee's representative, the Board has not previously ruled on the same or a similar issue for the licensee, or issued a general information letter on the same or similar issue.
 - d) A statement of authorities supporting the license's position, an explanation of the grounds for that conclusion and the relevant authorities to support that conclusion.
 - e) A statement of authorities contrary to the license's position. Each licensee is under an affirmative duty to identify any and all authorities contrary to the license's views. If the licensee determines that there are no contrary authorities or the licensee is unable to locate such authority, the request must contain a statement to that effect.
 - f) After a request is received and reviewed, the Board will schedule a conference with the licensee and/or the licensee's representative. After

the conference and prior to any ruling issued by the Board, the licensee may withdraw its request for a private letter ruling.

9) An identification of any specific proprietary or trade secret information licensee requests be deleted from the publicly disseminated version of the private letter ruling.

10) The signature of the licensee or the licensee's representative.

11) The Board will redact certain information from private letter rulings prior to public dissemination. Redactions will include the name and address of the licensee and the licensee's representative, name of the business entity and any other identifying information such as DOB or SSN.

12) Private letter rulings will cease to bind the Board if there is a pertinent change in statutory law, case law, rules or material facts.



SUGGESTED PROCESS AND FORMAT FOR THE IMPLEMENTATION OF DECLARATORY RULINGS OR OPINIONS JULY 9, 2021

From time to time there is an opportunity or need for the Illinois Gaming Board to issue declaratory rulings or opinions. This has become more and more evident during the past year with Gubernatorial Executive Orders, guidance from the Department of Public Health that required more specific clarification and various procedures, waivers and rulings from the Gaming Board. As a result the Administrator has invited interested parties to submit comments or suggestions related to the implementation of a declaratory ruling procedure.

The following represents the Illinois Casino Gaming Association member's comments and suggestions.

For ease of searching, we suggest that a separate heading be placed on the HOME page of the IGB website.

For ease of referencing specific information and identification purposes we suggest a numbering system be adopted that would differentiate between the type of gaming addressed, for example casino, sports wagering, video gaming, racinos and general.

Additionally, there should be an identifier for the year, a sequential number and finally a short phrase identifying the issue.

For Example:

C- 2021-0001 The requirement for a Box Person at craps tables----The first ruling related to casinos

G-2021-0005 Wearing of masks -----The fifth ruling related to every type of gaming

V-2021-0003 Posting of signs for problem gamblers -----The third ruling related to video gaming

The next issue; how to let interested people know a new ruling/opinion has been posted to the web site. Rather than have interested people go to the web site frequently to check, we would suggest developing a master email list similar to what you have now for IGB meetings. When a ruling/opinion is issued it would then be posted on the web site and an email would go to the list

stating for example—“A new Declaratory Ruling/Opinion C-2021-0002 Hand Sanitizing- has been posted to the IGB web site”.

At a minimum this list should include the General Managers and the Compliance Officers at the casinos and racinos, the Executive Director of the Illinois Casino Gaming Association, the licensed video gaming operators and the Executive Director of the Illinois Gaming Machine Operators Association and any other Associations representing the video gaming industry.

Or a “Subscription Link” could be created.*

* Illinois already has a Gaming Board subscription option. This works similarly to most marketing of websites. The user or clicks on a link on a website to subscribe to newsletters. The user fills out a form, providing contact information. The user opts in and gets sent an auto confirmation email. The user confirms receipt of the email and confirms that they want to opt in. The user then gets added to the websites mailing list. Some sites take this a step further and have the user select what type of newsletters they would like to receive, that way the user only sees newsletters they care about. Typically any email that’s sent to the subscribed user comes with an “unsubscribe” link.

NOTE:

To Access the Illinois link go to www2.Illinois.gov

On the bottom left hand side click on emails

Click on Specific Subjects/Agencies

Click on Gaming

Tom Swoik, Executive Director
Illinois Casino Gaming Association

Erin Lynch Cordier



August 30, 2021

[VIA EMAIL \(IGB.DirectorOfPolicy@illinois.gov\)](mailto:IGB.DirectorOfPolicy@illinois.gov)

Joe Miller
Illinois Gaming Board
160 N. LaSalle Street, Suite 300
Chicago, IL 60601

RE: *Comments Regarding Declaratory Ruling Process*

Director of Policy:

This correspondence is submitted on behalf of the Illinois Gaming Machine Operators Association (the “IGMOA”) to address the Illinois Gaming Board’s (the “IGB”) request for comments or suggestions related to the implementation of a declaratory ruling procedure (“Declaratory Ruling Process”).

We appreciate the opportunity to submit comments regarding a Declaratory Ruling Process and believe industry input is a critical component to the rulemaking process. The IGMOA has previously advocated for the implementation of a transparent process to allow Applicants and Licensees the opportunity to seek meaningful guidance from the IGB regarding the application and interpretation of its rules. While the IGMOA’s initial emphasis was for such a process to apply to the implementation of the recent amendments to the Inducement Rule (Rule 1800.350), the IGMOA supports the broader goal of developing a Declaratory Ruling Process for all rules and regulations that fall under the IGB’s jurisdiction (the “Rules”), as there is room for interpretation in almost every Rule.

The IGMOA strongly believes that a Declaratory Ruling Process is necessary and will benefit the entire Illinois gaming industry, particularly the video gaming industry. The Illinois video gaming industry presents unique challenges – both for Licensees and the IGB. While this segment of the industry has experienced tremendous success in the last eight (8) years of operations, it continues to evolve and adapt, and the issues requiring interpretation and application of the Rules are no exception. Unlike Casinos, Terminal Operators and licensed establishments do not have the benefit of on-site IGB personnel to aid in those decisions for the property. Instead, many Terminal Operators, and some licensed establishment chains with multiple locations, operate across several regions of the State, which proves challenging because field agents often have varying “local” ideas of the interpretation of the Rules. This leads to an overall lack of consistency and sense of confusion regarding the application of those Rules across the State. The IGMOA is hopeful that a Declaratory Ruling Process will address these issues by improving communication with IGB staff and providing consistent and easily accessible guidance to the entire industry, which

is an enormously important factor in a competitive environment. A Declaratory Ruling Process will be a valuable tool and will allow the IGB to better enforce its Rules: when the industry has a clear and uniform view of how the Rules will be interpreted, its participants are better equipped to self-regulate and also assist in reporting legitimate violations.

The IGMOA intends to be an active participant in providing comments and suggestions to any proposed Declaratory Ruling Process during the administrative rulemaking process. For purposes of preparing the initial draft of any such proposed Declaratory Ruling Process, the IGMOA encourages the IGB to consider the following, which the IGMOA believes will be critical to the successful implementation of this new procedure in a manner that provides meaningful guidance to the industry while using the IGB's resources as efficiently as possible:

Allow for flexibility. After careful consideration and an analysis of similar processes that other State agencies have adopted, the IGMOA suggests that any Declaratory Ruling Process allow for flexibility. No one process can apply to all types of industry related questions. In addition, given the fact intensive nature of certain questions, providing a mechanism for discussion between the Applicant or Licensee and the IGB staff would be a beneficial component of the process.

Allow for prompt responses. As the IGB can appreciate, certain questions require nearly "real-time" responses while other strategic inquiries can afford a lengthier thirty (30) to sixty (60) day response period. The IGB should consider implementing a process whereby an Applicant or Licensee who believes its inquiry is relatively straightforward and is generally seeking confirmation of its understanding may submit a question and seek an expedited response (e.g., within five (5) business days). Upon receipt, the IGB should have the opportunity to review the inquiry and determine whether the Applicant or Licensee's assessment of the type of question is merited, or whether additional time to respond could reasonably be afforded. Particularly in the early stages, this will hopefully eliminate repeated questions on the same topic that build up and create a backlog.

Allow for both concise and detailed responses. Moreover, certain questions require a more detailed explanation regarding the IGB's justification for a response, while a more concise response will be adequate for many routine inquiries. The IGB should consider tailoring the level of detail it is required or expected to provide in response to an inquiry, based on both the subject matter of the inquiry and the permitted timeframe for the response. For example, routine questions and inquiries about certain topics should be answered by the IGB in a concise manner, provided that the IGB keep records of its responses and that summaries thereof are periodically made available.

Allow for confidentiality. The detailed background investigation, the highly competitive nature of the industry, and breadth of confidential and proprietary information made available to the IGB to fulfill its regulatory obligations demands that communications with regulators, at least in certain circumstances, be maintained in confidence. A mechanism for Applicants and Licensees to designate certain questions as confidential is critical for the integrity of the industry as well as the willingness of sophisticated businesses and individuals to participate in the industry and the Declaratory Ruling Process.

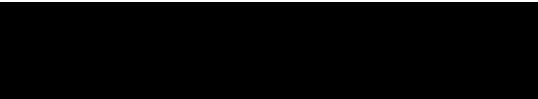
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Allow for publication. By making routine or repeated inquiries and responses promptly and regularly available on the IGB's website, the IGB will decrease the administrative burden associated with a Declaratory Ruling Process, as the industry will have easy access to a central location where participants can review previous responses to such questions. As you know, during the initial development of the Illinois video gaming industry, the IGB published Frequently Asked Questions on its website, which were widely referenced by industry participants to resolve common issues. Such an approach was, and remains, helpful to the industry. Routinely publishing content may also limit FOIA requests that would otherwise be made to obtain such information.

As always, we offer our thanks to the IGB for its willingness to engage with us in the development of what we believe will be a useful and valuable tool for promoting transparency, consistency, integrity and healthy competition within the industry. We and the IGMOA will continue to be available for participation in future discussions on this topic.

Regards,

TAFT STETTINIUS & HOLLISTER LLP



Erin Lynch Cordier

EKL:hap

cc: Administrator Fruchter
Paul T. Jenson
Ivan Fernandez
