



State of Minnesota • Gambling Control Board

Suite 300 South
1711 W. County Road B
Roseville, MN 55113
612/639-4000

April 4, 1994

Ms. Maryanne V. Hruby, Executive Director
LEGISLATIVE COMMISSION TO REVIEW
ADMINISTRATIVE RULES
55 State Office Building
100 Constitution Avenue
St Paul MN 55155

Re: In the Matter of Proposed Rules of the Minnesota Gambling Control Board Relating to Illegal Gambling: Minnesota Rules Chapters 7861.0010 (Definitions); 7861.0040 (Premises Permits); 7861.0050 (Illegal Gambling); 7861.0050 (Conduct of Lawful Gambling); 7861.0130 (Excluded Bingo and Raffles); 7861.0140 (Exempted Lawful Gambling); and 7865.0020 (Suspensions or Revocations)

Dear Ms. Hruby:

The Minnesota Gambling Control Board intends to adopt rules relating to Illegal Gambling. We plan to publish a Notice of Intent to Adopt Rules With or Without a Public Hearing in the April 18, 1994 State Register.

As required by Minnesota Statutes, sections 14.131 and 14.23, the Board has prepared a Statement of Need and Reasonableness which is now available to the public. Also, as required, a copy of this Statement is enclosed with this mailing.

For your information, we are also enclosing a copy of the Notice of Intent to Adopt Rules, and a copy of the Revisor's draft of the proposed rules in this matter.

If you have any questions or need further information about these rules, please contact me at 639-4000.

Sincerely,

A handwritten signature in cursive script that reads "Sharon A. Beighley".

SHARON A. BEIGHLEY
Rules Coordinator

Enclosures: Statement of Need and Reasonableness
Notice of Intent to Adopt Rules
Proposed Rule Draft

cc: Bernice Caruth

STATE OF MINNESOTA

MINNESOTA GAMBLING CONTROL BOARD

In the Matter of the
Proposed Adoption of the Rule
of the Minnesota Gambling
Control Board, Relating to Mn. Rules
7861.0010 (Definitions); 7861.0040
(Premises Permits); 7861.0050 (Illegal
Gambling); 7861.0060 (Conduct of Lawful
Gambling); 7861.0130 (Excluded Bingo and
Raffles); 7861.0140 (Exempted Lawful
Gambling) and 7865.0020 (Suspensions or
Revocations)

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION AND BACKGROUND

The Board received a petition from Allied Charities of Minnesota on May 24, 1993, requesting that the Board review and amend its rules relative to illegal gambling. The petition cited as its basis the fact that licensed organizations are presently subjected to the loss of their premises permits if illegal gambling is conducted on the premises, even though the licensed organization was not aware of the illegal conduct, or no criminal charges were ultimately filed against the owner of the site. The petition further stated that the current rule was unfair, and failed to consider the lack of culpability of the affected organization. The petition sought relief by requesting that the Board amend its rules to allow more reasonable disciplinary sanctions against an organization, if that organization did not know of, or participate in, the illegal gambling.

The Board responded to the petition by publishing a notice of solicitation of outside information and opinions in the State Register on August 16, 1993 and forming a Public Advisory Committee (PAC) to assist the Rules Committee of the Board in considering rule amendments in the area of illegal gambling.

The Board staff and PAC subsequently met on November 18, 1993 and January 5, 1994 and discussed proposed modifications to the rule. A joint meeting of the Board's Rules Committee and PAC was held on February 11, 1994 and agreement was reached on the proposed rule modifications. At that meeting, the Rules Committee moved to recommend to the full Board that formal promulgation of the rulemaking procedures be authorized.

On February 15, 1994 the Board met and discussed the proposed amendments. Following that discussion, the Board voted to refer the issue back to the PAC and Rules Committee to review issues relating to the length of a suspension for a first instance of illegal gambling at a site, and whether or not the Board could require an organization to report instances of illegal gambling at their site.

Subsequent to this direction from the Board, the Rules Committee and PAC held another joint meeting on March 14, 1994 to review the issues raised at the February 15, 1994 Board meeting. At this meeting, it was decided to increase the length of time for license suspension or revocation due to a first occurrence of illegal gambling at a site from the sixty days originally proposed to ninety days. It is

important to point out here that, even though current rule requires a one year suspension for an illegal gambling infraction, the license may actually be suspended for far less time than one year. This may occur because the present rule mandates that the suspension time to be served begin when the illegal gambling occurred, not when the matter is ultimately adjudicated by the Board. For example, if illegal gambling was reported to the Department of Public Safety in January of 1993, the Department of Public Safety would investigate the allegation and determine whether or not illegal gambling had actually occurred. If they determined that illegal gambling had occurred, they would then notify the Board, who would set a date for a hearing and proceed through the contested case procedure. By the time all of this had occurred, six months or more may have passed from the date of the infraction to the date of adjudication by the Board. Since the one year suspension or revocation runs from the date of the occurrence, the license in actuality may be suspended for a period of considerably less than one year. The new rule that the Board is proposing would mandate that the suspension or revocation period begins on the date of final adjudication by the Board.

At the March 14th meeting the PAC and Rules Committee decided not to recommend rules requiring licensees to report illegal gambling at their site. It was thought that such a rule would be impractical and difficult to enforce. In addition, the Board's authority to require such reporting is also in question. The Rules Committee voted, on March 14th, to return the rule amendment to the full Board, making the change from a 60 day suspension for a first infraction to 90 days, with the recommendation that the Board authorize formal rulemaking procedures to be initiated.

The Gambling Control Board met on March 21, 1994 and received the recommendation of its Rules Committee to proceed with formal rulemaking in the area of illegal gambling issues. At the meeting, testimony in favor of the proposed amendment was given by the Department of Public Safety, the Department of Revenue, the Minneapolis Police Department and the Liquor Control Board. Following discussion, the Board voted and authorized the Chair to sign the authorizing resolution which would initiate formal rulemaking procedures.

In summary, the amendments will provide that an organization's license will be suspended for ninety days for a first violation of the illegal gambling rule. This is a relaxation of the present rule requiring a one year license suspension for a first violation. However, second and third violations of the rule will now carry harsher penalties, i.e., for a second violation an organization's license is suspended for two years, and a third violation carries a permanent revocation. Both second and third violations, under the proposed rule amendment, will be considered "first" violations if a "complete change of ownership of the site" occurs between the first and second or second and third violations. The rule amendments also provide a comprehensive definition of "complete change of ownership", and make other clarifications to the rules for the purposes of continuity.

II. STATEMENT OF THE BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt this rule is set out in Minnesota Statutes, section 349.151, subdivision 4(a), (1992), which lists the powers and duties of the Board. Section 349.151, subdivision 4(a), clause (1) authorizes the Board to regulate lawful gambling to ensure that it is conducted in the public interest; clause (5) authorizes the Board to promulgate rules authorized by this chapter; and clause (15) authorizes the Board to take all necessary steps to ensure the integrity of, and public confidence in, lawful gambling.

III. PUBLIC ADVISORY COMMITTEE

The Board formed a Public Advisory Committee to assist in researching the illegal gambling issues, and to assist in developing recommendations for the proposed rule amendments. The Public Advisory Committee met on four occasions (dates noted in the Introduction and Background section) for the purpose of reviewing and suggesting revisions to the proposed rules drafts. Members of this Public Advisory Committee were:

JOHN BERGLAND

Executive Director, Minn. Licensed Beverage Assn.
2353 Rice Street #139
Roseville MN 55113
612-486-0910

LANCE BOELTER

Minnesota Liquor Control Board
190 5th Street East #105
St Paul MN 55101
612-296-6258

JOHN BOLAND

Boland & Associates
26 East Exchange Street #100
St Paul MN 55101
612-225-9440

SGT. STEVE ERICKSON

Minneapolis Police Department, Licensing Division
350 S 5th Street #1A
Minneapolis MN 55415
612-673-3804

ROGER FRANKE

Arrow International, Inc.
11975 Portland Avenue #126
Burnsville MN 55337
612-890-7180

LARRY HENNIG

Gambling Manager, Confidence Learning Centers
10706 203rd Avenue NW
Elk River MN 55330
612-441-0557

KEN LIEN
Lien Games
PO Box 564
Fargo ND 58107
701-232-7755

MARY MAGNUSON
Jacobson, Buffalo, Schoessler & Magnuson
700 Lumber Exchange Building
10 So 5th Street
Minneapolis MN 55402
612-339-2071

NORM PINT
Minnesota Gambling Enforcement Division
1600 University Avenue #306
St Paul MN 55104
612-643-3006

GREG PRICE
Minnesota Department of Revenue
10 River Park Plaza
St Paul MN 55146-3331
612-297-2149

KING WILSON
Executive Director, Allied Charities of Minnesota
PO Box 21264
Minneapolis MN 55421-0264
612-571-7495

IV. SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, section 14.115, requires an agency, when proposing a new rule or amending an existing rule that may affect small businesses, to consider certain methods of reducing the impact of the rule on small businesses.

The proposed rule amendments have the effect of reducing the penalties on charitable organizations who may lease or rent space for their lawful gambling operations from a private lessor, and said private lessor may subsequently be found to have had illegal gambling occur at his/her site. Present rules require that the Board suspend an organization's premises permit for one year for a violation of the illegal gambling rule, even though the owner of the site may never be charged or convicted in the incident. In essence, this rule amendment will ease the burden currently imposed on organizations which, while non-profit in nature, could possibly be classified as small businesses.

The proposed rule amendments may also have the effect of causing a retail establishment, such as a bar, to lose income due to the loss of charitable gambling at his/her establishment. This would occur when a charitable organization's license to conduct lawful gambling at a particular site(s) is suspended or revoked because of an illegal gambling occurrence at that site. In addition to the potential loss of income

generated by the sale of food and beverage to those who come to their establishment to participate in lawful gambling, the establishment would also lose the monthly rent payment from the organization. The owner of the establishment could conceivably argue that his/her business will suffer as a result of the Board's actions in suspending or revoking a lawful gambling license. The Board gave this issue careful consideration, and decided that its statutory mandate to protect the integrity of lawful gambling operations outweighed any risks faced by the owners of sites where lawful gambling is conducted. Indeed, the Board feels that promulgation of this rule will encourage bar owners to more effectively police their own premises and assist in insuring that illegal gambling does not occur on their premises. This rule may act as an incentive for them to retain their lawful gambling operations.

Other than the above-mentioned circumstances, the Board does not feel that this rule will impact small businesses in either a positive or negative manner.

IV. DEPARTMENTAL CHARGES IMPOSED BY THE RULES

Minnesota Statutes, section 16A.1285 does not apply because the rules do not establish or adjust charges for goods and services, licenses, or regulation.

V. FISCAL IMPACT

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules. Likewise, a fiscal note is not required pursuant to section 3.982 as the rule will not force any local agency or school district to incur costs.

VI. AGRICULTURAL LAND IMPACT

Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

VII. WITNESSES

If these rules go to a public hearing, the witnesses listed below may testify on behalf of the Board in support of the need for and reasonableness of the rules. The witnesses will be available to answer questions about the development and the content of the rules.

Harry W. Baltzer, Executive Director, Gambling Control Board
Sharon A. Beighley, Rules Coordinator, Gambling Control Board
Lance Boelter, Deputy Director, Minnesota Liquor Control Board
John Garry, Assistant Attorney General
Joe Newton, Special Assistant Attorney General
Norm Pint, Gambling Enforcement Division, Dept. of Public Safety
Greg Price, Special Taxes Department, Minnesota Dept. of Revenue

VIII. DETAIL OF THE PROPOSED RULE AND STATEMENT OF NEED AND REASONABLENESS

7861.0010 DEFINITIONS.

The Board proposes to add a new subpart, 3d, to define what "immediate family" means. Immediate family is referred to throughout the Board's rules, and is presently defined in each relevant chapter of the rules. The rule change is necessary in order to make it easier for licensees and others using the rules to find a definition of "immediate family". The rule change is reasonable, because it does not diminish the Board's ability to regulate lawful gambling. It makes the rules more readable and understandable to those persons using them. In addition, as the Board works on other chapters of its rules, existing definitions of "immediate family" will be removed from the individual chapters affected.

The new definition of "immediate family" is not unlike the definition currently found in the rules, and is not inconsistent with generally accepted definitions of this term.

7861.0040 PREMISES PERMITS.

The Board is proposing a change to subpart 4(A)(4) to make it clear that a premises permit must not expire during the term of the premises permit. The rule is necessary as a matter of clarification, and to spell out that the term of the lessor's agreement with the organization must parallel that of the premises permit issued by the Board. The rule is reasonable because it imposes no undue burden on the lessor or the organization, and merely serves to clarify the premises permit term requirements. The new rule also provides for termination of a premises permit agreement prior to the expiration date through mutual consent of the parties.

The Board is proposing a change to Subpart 4(A)(11). The current rule requires a clause in the lease agreement providing for termination of an organization's lease if the premises governed by the lease is the site where gambling, liquor, prostitution or tax evasion violations have occurred. The amendment would insert the word "illegal" prior to the word "gambling", and delete the words "liquor, prostitution, or tax evasion violations" from the clause. The Board has no authority over liquor, prostitution or tax evasion violations and, as such, this portion of the rule needs to be deleted.

A new rule is being proposed, 4(A)(12), in order to protect the organizations that the Board has licensed from potential retribution by a lessor. The amendment is necessary in order to offer some form of protection to organizations who may elect to report the occurrence of illegal gambling at their site. The rule amendment is reasonable because it serves as encouragement for organizations to report illegal gambling activities at their site without fear of retribution by their lessor.

The Board is proposing to strike and replace language in subpart 9(B)(3) of the rule, dealing with issuance and denial of premises permits. The current rule provides that the Director shall deny a premises permit application when illegal gambling has occurred on the proposed site within the past twelve months, or the lessor has been convicted of illegal gambling within the last twelve months. The Board is proposing to strike this language and replace it with new language to provide that the Director shall

deny a premises permit when illegal gambling was conducted at the proposed site within the past 90 days and at a time when no licensed organization had a premises permit for the site; at a time when another organization's premises permit for the proposed site is under suspension or revocation; or when a prior premises permit for the proposed site would have been subject to suspension or revocation, and the suspension or revocation period that could have been imposed has not elapsed. The new language is necessary in order to clearly define the circumstances under which the Director shall deny a premises permit. The rule also serves to preclude a lessor from entering into an agreement with a different organization in order to have lawful gambling continue on his premises during the time that the original premises permit is under suspension or revocation. The rule change is also necessary to protect the integrity of the lawful gambling industry in Minnesota. The rule is reasonable because it does not impose any undue burden on either the lessor or licensees of the Board. Further, the rule is reasonable because it serves to enhance the Board's ability to protect the integrity of lawful gambling, and to aid in insuring that illegal gambling is not conducted at a site where lawful gambling is permitted.

7865.0050 ILLEGAL GAMBLING.

The Board is proposing a change to subpart 1 to delete the word "premises" and substitute the word "site". The change is necessary in order to make it clear that illegal gambling is prohibited not only at sites for which premises permits have been granted, but also at sites that may be wholly owned by organizations. The proposed change is reasonable because the Board cannot be less stringent in its application of the rule toward organizations who own their own sites than organizations who must lease premises. The rule is also reasonable because it clearly spells out that illegal gambling is strictly prohibited in establishments where lawful gambling is permitted.

A change is being proposed for subpart 2 to add the words "against license" to the title of the subpart, and to remove the requirement that the Board shall suspend an organization's premises permit for one year for a violation of this rule. The changes are necessary in order to clarify that this subpart deals with discipline strictly against an organization's license, rather than a premises permit. It is also necessary in order to be fair to those organizations who may not have been aware that illegal gambling was being conducted at the site of their leased premises. The Board and the industry both feel that the requirement for a one year mandatory suspension is too severe in the case of an organization who was not culpable in the illegal gambling violation. In addition, under current rule language the lessor is not prohibited from recruiting another organization to take the place of the suspended organization. This results in the only punishment being meted out going to the organization itself, who may not have even been involved in the original violation. The rule change is reasonable because it serves to protect the licensed organizations from perhaps suffering retribution because illegal gambling occurred at their site when they were not involved in the incident. The rule change is also reasonable because the Board is not proposing that discipline for illegal gambling be dispensed with altogether; rather, it is easing the sanctions for a "first" violation, while adding stiffer penalties for second and third violations. It is proposing a new rule in subpart 3 to deal with discipline against premises permits.

The Board is proposing a new subpart 3 to this rule to deal with discipline against premises permits. The proposed rule provides that for a first violation of the illegal gambling rule, the premises permit for the site shall be suspended for 90 days. The rule further provides that for a second violation of the illegal gambling rule at the same site, the premises permit shall be suspended for two years unless a complete change of ownership of the site occurs between the first and second violations. It also

provides that if a violation occurs a third time, the license shall be revoked for a period of five years, and such revocation will become permanent thereafter until a complete change of ownership of the site takes place. The rule is necessary in order to establish a proper and fair method of administering discipline for violations of the illegal gambling rules. The rule is also necessary because the Board feels that the current rule (requiring a one year suspension for the first violation) is too harsh, and the proposed schedule of suspensions and revocations is much more equitable to all organizations involved. The rule is reasonable because it establishes varying degrees of suspension or revocation periods for violations of the rule. The rule is also reasonable because it takes into account the fact that a complete change of ownership may occur between the first and second, or second and third violations. If such a change of ownership does occur, penalties are lessened for organizations seeking a new premises permit for that site.

The Board is proposing the addition of subpart 4 to this rule, which will define what "a complete change of ownership" is. The rule is necessary in order to establish parameters for the Board when considering premises permit applications for sites where illegal gambling may have occurred in the past. The rule is reasonable because it does not impose any undue hardships on the organizations seeking premises permits, nor does it have an unfair impact on lessors (or new owners) of a site. For instance, the rule recognizes that, in most instances, the only vehicle for accomplishing a sale of a bar is through the "contract for deed" method. The rule clearly points out that an appropriately recorded contract for deed will constitute a complete change of ownership for purposes of this particular rule. The rule is also reasonable because it clearly states that the existence of a complete change of ownership is an affirmative defense for an organization that is applying for a premises permit for that site.

7861.0060 CONDUCT OF LAWFUL GAMBLING.

It is being proposed to add a new item E to subpart 4 of the rule. This item will require that the licensed organization must post a statement, on a form prescribed by the Board, that illegal gambling is prohibited. The rule is necessary in order to ensure that the public is as fully informed as possible about the prohibition against illegal gambling, and to ensure that the organization will do its part in keeping the premises free from illegal gambling activity. The rule is reasonable because it does not impose any undue burden on the organization, and is another safeguard against illegal gambling activity.

7861.0130 EXCLUDED BINGO AND RAFFLES.

The Board is proposing to add language to subpart 2 of this rule dealing with restrictions. The new language would prevent excluded bingo from being conducted at sites where illegal gambling has occurred and the premises permit for that site has been disciplined pursuant to Mn. Rules 7861.0050. The rule change is necessary in order to prevent lessors from going out and recruiting organizations to conduct excluded bingo at his/her site when a licensed organization at that site has had its premises permit for that site suspended or revoked because of an illegal gambling violation. The rule is also necessary to ensure that no lawful gambling of any form takes place at a site where a premises permit is currently under suspension or revocation for illegal gambling violations. The rule is reasonable because it imposes no undue hardships on any organization, it serves to more fully protect licensed organizations, and to more fully protect the integrity of lawful gambling in Minnesota and the public confidence in the games.

7861.0140 EXEMPTED LAWFUL GAMBLING.

The Board proposes to add new language to subpart 4 of this rule. The new language will restrict exempted lawful gambling from being conducted at a site where illegal gambling has occurred, and premises permits for that site have been the subject of discipline pursuant to Mn. Rules 7861.0050. The rationale for this rule is much the same as for the previous rule on excluded bingo and raffles. The Board feels that the rule is necessary in order to prevent lessors from recruiting other organizations to conduct exempted gambling at his/her site after the originally licensed organization has had its premises permit revoked or suspended for illegal gambling violations. The rule is reasonable because it does not impose any undue burdens on the licensee, and serves to protect the organizations from losing their sites to exempted organizations because of an illegal gambling issue.

7865.0020 SUSPENSIONS OR REVOCATIONS.

The Board is proposing a minor addition to subpart 4 of this rule, to make it clear that grounds for denial of a premises permit are also grounds for revocation or suspension of a premises permit. The rule change is necessary to provide clarification to the existing rule. The rule is reasonable because it imposes no undue burden on the licensee, and serves to enhance the Board's ability to effectively protect the integrity of the lawful gambling industry in Minnesota.

IX. CONCLUSION

Based on the foregoing, the proposed Minnesota Rules parts 7861.0010, 7861.0040, 7861.0050, 7861.0060, 7861.0130, 7861.0140 and 7865.0020 are both necessary and reasonable.

Dated: 3-21-94


HARRY W. BALTZER, EXECUTIVE DIRECTOR
MINNEAPOTA GAMBLING CONTROL BOARD

Office of the Revisor of Statutes

Administrative Rules

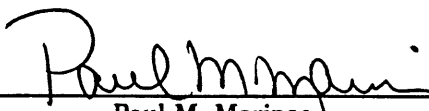


TITLE: Proposed Permanent Rules Governing Lawful Gambling

AGENCY: Gambling Control Board

MINNESOTA RULES: Chapters 7861; and 7865

The attached rules are approved for
publication in the State Register


Paul M. Marinac
Deputy Revisor

1 Gambling Control Board

2

3 Proposed Permanent Rules Governing Lawful Gambling

4

5 Rules as Proposed

6 7861.0010 DEFINITIONS.

7 [For text of subps 1 to 3c, see M.R.]

8 Subp. 3d. Immediate family. "Immediate family" means
9 spouse, children, parents, siblings.

10 [For text of subps 4 to 13, see M.R.]

11 7861.0040 PREMISES PERMITS.

12 [For text of subps 1 to 3, see M.R.]

13 Subp. 4. Attachments to application. The following must
14 be attached to the premises permit application:

15 A. A copy of the lease must be submitted. A lease
16 must be on a form prescribed by the board and must contain at a
17 minimum the following information:

18 (1) the name, business address, and telephone
19 number of the lessor;

20 (2) the name, business address, and license
21 number of the licensed organization;

22 (3) the name and street address of the leased
23 premises;

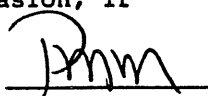
24 (4) the term of the agreement, which must be one
25 year concurrent with the term of the premises permit, unless
26 terminated sooner by mutual consent of the parties or pursuant
27 to subitem (11);

28 (5) the type of gambling activity to be
29 conducted;

30 (6) the monetary consideration, if any, expressed
31 in terms of number of dollars per month or number of dollars per
32 bingo occasion, whichever is applicable;

33 (7) the dimensions of the leased premises and the
34 total number of square feet leased;

35 (8) the days and hours of each bingo occasion, if



1 any;

2 (9) all obligations between the organization, its
3 employees or agents, and the lessor and its employees or agents;

4 (10) an irrevocable consent from the lessor that:

5 (a) the board and its agents, the
6 commissioners of revenue and public safety and their agents, and
7 law enforcement personnel have access to the permitted premises
8 at any reasonable time during the business hours of the lessor;

9 (b) the organization has access to the
10 permitted premises during any time reasonable and when necessary
11 for the conduct of lawful gambling on the premises;

12 (c) the owner of the premises or the lessor
13 will not manage the conduct of gambling at the premises;

14 (d) the lessor, the lessor's immediate
15 family, and any agents or gambling employees of the lessor will
16 not participate as players in the conduct of lawful gambling on
17 the premises;

18 (11) a clause that provides for the termination
19 of the lease if the premises is the site where illegal gambling,
20 liquor, prostitution, or tax evasion violations have has
21 occurred;

22 (12) a clause stating that the lessor shall not
23 modify, terminate, or refuse to renew the lease in whole or in
24 part because the organization reported to a state or local law
25 enforcement authority or the board the occurrence at the site of
26 illegal gambling activity in which the organization did not
27 participate; and

28 (13) any other agreements between the
29 organization and the lessor.

30 B. A copy of the sketch of the floor plan with
31 dimensions showing what portion is being leased and the total
32 square footage.

33 C. A copy of the resolution from the appropriate
34 local unit of government under Minnesota Statutes, section
35 349.213, subdivision 2, approving the premises permit.

36 [For text of subs 5 to 8, see M.R.]

1 Subp. 9. Issuance and denial. The following items apply
2 to the issuance or denial of premises permits:

3 [For text of item A, see M.R.]

4 B. Notwithstanding the provisions of item A, the
5 director shall deny a premises permit application when:

6 (1) the applying organization does not have a
7 licensed gambling manager or person who will be issued a
8 gambling manager's license at the time the premises permit is
9 issued;

10 (2) the applying organization does not have a
11 license to conduct lawful gambling or will not have a license to
12 conduct lawful gambling at the time the premises permit is
13 issued; or

14 (3) ~~the proposed site is a site where illegal~~
15 ~~gambling has occurred within the last 12 months or the lessor~~
16 ~~has been convicted of illegal gambling within the last 12~~
17 ~~months; illegal gambling was conducted at the proposed site~~
18 ~~within the 90 days immediately preceding the date of the~~
19 ~~premises permit application, and at a time when no licensed~~
20 ~~organization had a premises permit for the site;~~

21 (4) another organization's premises permit for
22 the proposed site is under suspension or revocation pursuant to
23 part 7861.0050; or

24 (5) a prior premises permit for the proposed site
25 would have been subject to suspension or revocation under part
26 7861.0050 and the suspension period or revocation that could
27 have been imposed for that site has not elapsed.

28 [For text of item C, see M.R.]

29 [For text of subp 10, see M.R.]

30 7861.0050 ILLEGAL GAMBLING.

31 Subpart 1. Prohibition. Illegal gambling may not be
32 conducted at a premises site for which a licensed organization
33 has a premises permit to conduct lawful gambling.

34 Subp. 2. Discipline against license. ~~The board shall~~
35 ~~suspend an organization's premises permit for one year for any~~

1 ~~violation-of-this-part-~~ The board shall suspend or revoke an
2 organization's license if the organization or its agents
3 participated in the illegal gambling prohibited by subpart 1, or
4 knowingly permitted it at a site owned or on premises leased by
5 an organization.

6 Subp. 3. Discipline against premises permit. The
7 suspension or revocation of a premises permit is a contested
8 case under Minnesota Statutes, chapter 14. For violations of
9 subpart 1 which occur after the effective date of this part, the
10 board shall suspend or revoke an organization's premises permit
11 as follows:

12 A. for the first violation of subpart 1 at a site,
13 the board shall suspend each premises permit for the site for a
14 period of 90 days from the date of the board's final resolution
15 or determination on the violation;

16 B. for the second violation of subpart 1 at a site,
17 the board shall suspend each premises permit for the site for a
18 period of two years from the date of the board's final
19 resolution or determination on the violation. If a complete
20 change of ownership of the site occurred between the first and
21 second violations, the second violation is considered a first
22 violation for purposes of this subpart and the board shall
23 suspend each premises permit for the site for a period of 90
24 days; and

25 C. for the third violation of subpart 1 at a site,
26 the board shall revoke each premises permit for the site for a
27 minimum period of five years from the date of the board's final
28 resolution or determination on the violation, which permanent
29 revocation shall continue unless and until a complete change of
30 ownership occurs after the third violation. If a complete
31 change of ownership occurred between the second and third
32 violations, the third violation is considered a first violation
33 for purposes of this subpart and the board shall suspend each
34 premises permit for the site for a period of 90 days from the
35 date of the board's final resolution or determination on the
36 violation.

1 Subp. 4. Complete change of ownership. For purposes of
2 this part, the term "complete change of ownership" means that no
3 person or member of the immediate family of the person who, at
4 the time of the prior violation was an owner or lessor of the
5 site or otherwise held a direct or indirect financial interest
6 in the site, is at the time of the subsequent violation an owner
7 or lessor of the site, holds a direct or indirect financial
8 interest of more than five percent in the site, or is a
9 participant in business or employment activity at and for the
10 licensed site. An appropriately recorded contract for deed does
11 not constitute a prohibited direct or indirect financial
12 interest for purposes of this part. The existence of a complete
13 change of ownership is an affirmative defense of an organization
14 that has, or is applying for, a premises permit for the site.

15 7861.0060 CONDUCT OF LAWFUL GAMBLING.

16 [For text of subps 1 to 3, see M.R.]

17 Subp. 4. Posting of information. A licensed organization
18 must prominently post the following information at the permitted
19 premises:

20 A. the name of the licensed organization;

21 B. the license number of the licensed organization
22 and the premises permit number;

23 C. the expiration date of the premises permit;

24 D. the notice of compulsive gambling information
25 which must at a minimum include the toll-free telephone number
26 established by the commissioner of human services for the
27 Minnesota hotline for compulsive gambling; and

28 E. a statement, on a form prescribed by the board,
29 that illegal gambling is prohibited; and

30 F. the house rules governing the conduct of gambling
31 at the premises. The sign on which this information is posted
32 must be adequately lighted, legible, and must at at least 18
33 inches by 24 inches in size.

34 [For text of subps 5 to 7, see M.R.]

35 7861.0130 EXCLUDED BINGO AND RAFFLES.

1 [For text of subpart 1, see M.R.]

2 Subp. 2. Restrictions. An organization may not conduct
3 excluded bingo if it has been licensed to conduct lawful
4 gambling in the current calendar year. The director shall deny
5 an excluded bingo application when the premises permit for the
6 site of the proposed excluded bingo is subject to suspension or
7 revocation pursuant to part 7861.0050.

8 The organization conducting lawful gambling must comply
9 with Minnesota Statutes, section 349.166.

10 7861.0140 EXEMPTED LAWFUL GAMBLING.

11 [For text of subps 1 to 3, see M.R.]

12 Subp. 4. Restrictions. An organization conducting
13 exempted lawful gambling must comply with Minnesota Statutes,
14 section 349.166, subdivision 2. An organization that is
15 licensed may not receive an exemption permit during the same
16 calendar year it has a license. The director shall deny an
17 exempted lawful gambling application when the premises permit
18 for the site of the proposed exempted lawful gambling is subject
19 to suspension or revocation pursuant to part 7861.0050.

20 7865.0020 SUSPENSIONS OR REVOCATIONS.

21 [For text of subps 1 to 3, see M.R.]

22 Subp. 4. Additional grounds. Any grounds for denial of a
23 license are also grounds for suspension or revocation of a
24 license. Any grounds for denial of a premises permit are also
25 grounds for suspension or revocation of a premises permit.

26 [For text of subp 5, see M.R.]

STATE OF MINNESOTA

MINNESOTA GAMBLING CONTROL BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULES OF THE
GAMBLING CONTROL BOARD GOVERNING:
DEFINITIONS, MINN. RULE PART 7861.0010
PREMISES PERMITS, MINN. RULE 7861.0040
ILLEGAL GAMBLING, MINN. RULE 7861.0050
CONDUCT OF LAWFUL GAMBLING, MINN. RULE 7861.0060
EXCLUDED BINGO AND RAFFLES, MINN. RULE 7861.0130
EXEMPTED LAWFUL GAMBLING, MINN. RULE 7861.0140
SUSPENSIONS OR REVOCATIONS, MINN. RULE 7865.0020

**NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC
HEARING UNLESS 25 OR MORE PERSONS REQUEST A HEARING;
NOTICE OF HEARING IF 25 OR MORE PERSONS REQUEST A HEARING;
AND
NOTICE OF CANCELLATION OF HEARING IF 25 OR MORE PERSONS DO
NOT REQUEST A HEARING**

1. **INTRODUCTION.** The Minnesota Gambling Control Board intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule within 30 days or by May 18, 1994, a public hearing will be held on June 10, 1994. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after May 18, 1994, the end of the 30-day comment period, and before June 10, 1994, the scheduled hearing date.

2. **AGENCY CONTACT PERSON.** Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to:

Sharon A. Beighley, Rules Coordinator
Minnesota Gambling Control Board
1711 West County Road B
Suite 300 South
Roseville MN 55113
612-639-4000

3. **SUBJECT OF RULE AND STATUTORY AUTHORITY.** The proposed rule relates to illegal gambling activities at sites where organizations are licensed to conduct lawful gambling, and the disciplinary sanctions currently enforced on those organizations whose leased premises are located on the site of the illegal gambling activity. The statutory authority to adopt the rule is Minnesota Statutes, section 349.151, subdivision 4(a), (1992) which lists the powers and duties of the Board. Section 349.151, subdivision 4(a), clause (1) authorizes the Board to regulate lawful gambling to ensure that it is conducted in the public interest, clause (5) authorizes the Board to promulgate rules authorized by this chapter; and clause (15) authorizes the Board to take all necessary steps to ensure the integrity of and public confidence in lawful gambling. A copy of the proposed rule is published in the State Register on April 18, 1994 and attached to this notice as mailed. A copy is also available free of charge by contacting the agency contact person.

4. **COMMENTS.** You have until 4:30 P.M. on Wednesday, May 18, 1994 to submit written comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

5. **REQUEST FOR A HEARING.** In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 P.M. on May 18, 1994. Your written request for a public hearing must include your name, address, and telephone number. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing.

6. **MODIFICATIONS.** The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rule as attached and printed in the State Register, and must be supported by data and views submitted to the agency or presented at the hearing. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

7. **CANCELLATION OF HEARING.** The hearing scheduled for June 10, 1994 will be cancelled if the Board does not receive requests from 25 or more persons that a hearing be held on the rule. If you requested a public hearing, the Board will notify you before the scheduled hearing whether or not the hearing will be held. You may also call Sharon A. Beighley at 612-639-4000 after May 18, 1994 to find out whether the hearing will be held.

8. **NOTICE OF HEARING.** If 25 or more persons submit written requests for a public hearing on the rule, a hearing will be held following the procedures in Minnesota Statutes, sections 14.14 to 14.20. The hearing will be held on Friday, June 10, 1994 in the Kelly Inn, I-94 & Marion Street, St. Paul, Minnesota beginning at 9:00 A.M. and continuing until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined by the administrative law judge. The administrative law judge assigned to conduct the hearing is Steve Mihalchick. Judge Mihalchick can be reached at the Office of Administrative Hearings, #1700 Washington Square, 100 Washington Avenue South, Minneapolis, Minnesota 55401, telephone number 612-349-2544.

9. **HEARING PROCEDURE.** If a hearing is held, you and all interested or affected persons including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the agency may respond in writing within five business days after the submission period ends to any

new information submitted. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearings no later than 4:30 P.M. on the due date. No additional evidence may be submitted during the five-day period. This rule hearing procedure is governed by Minnesota Rules, parts 1400.0200 to 1400.1200 and Minnesota Statutes, sections 14.14 to 14.20. Questions about procedure may be directed to the administrative law judge.

10. **STATEMENT OF NEED AND REASONABLENESS.** A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule. It also includes a summary of all the evidence and argument which the Board anticipates presenting at the hearing, if one is held. The statement may also be reviewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

11. **SMALL BUSINESS CONSIDERATIONS.** The Minnesota Gambling Control Board is subject to Minnesota Statutes, section 14.115 (1992), regarding small business considerations in rulemaking. The Board's evaluation of the applicability of the methods contained in Minnesota Statutes, section 14.115, subdivision 2, (1992) for reducing the impact of the proposed rules on small businesses have been considered and discussed in the Statement of Need and Reasonableness. There will be no negative impact on small businesses inasmuch as no additional fees or license requirements need to be submitted by the organization. There is potential for positive financial impact on small businesses, as under the proposed rules organizations would no longer face suspension for one year for a first occurrence of illegal gambling at their leased premises. The proposed rule would reduce the suspension time for a first violation from one year to 90 days. There is, however, also the potential for a negative financial impact on small business bar owners whose establishments may be the site of illegal gambling, resulting in the loss of income from charitable gambling and the rents paid by the licensed organization(s) to operate at that site.

12. **EXPENDITURE OF PUBLIC MONEY BY LOCAL PUBLIC BODIES.** This rule will not require the expenditure of public money by local public bodies, therefore Minnesota Statutes, section 14.11, subd. 1 is not applicable.

13. **IMPACT ON AGRICULTURAL LANDS.** This rule will have no impact on agricultural lands, therefore Minnesota Statutes, section 14.11, subdivision 2 is not applicable.

14. **LOBBYIST REGISTRATION.** Minnesota Statutes chapter 10A requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at First Floor, Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone number 612-296-5148.

15. **ADOPTION PROCEDURE IF NO HEARING.** If no hearing is required, after the end of the comment period the Board may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you want to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.

16. **ADOPTION PROCEDURE AFTER THE HEARING.** If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You may request to be notified of the date on which the administrative law judge's report will be available, after which date the Board may not take any final action on the rule for a period of five working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. You may also request notification of the date on which the rule is adopted and filed with the Secretary of State. The Board's Notice of Adoption must be mailed on the same day that the rule is filed. If you want to be notified of the adoption, you may so indicate at the hearing or send a request in writing to the agency contact person at any time prior to the filing of the rule with the Secretary of State.

Date: 3-21-94


HARRY W. BALTZER, EXECUTIVE DIRECTOR
MINNESOTA GAMBLING CONTROL BOARD