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ATTORNEY GENERAL
STATE OF ILLINOIS

April 14, 1994

FILE NO. 94-011

SPORTS AND GAMING:
Licensure of In-State Manufacturers
as Suppliers of Gambling Devices
to Riverboat Casinos

Mr. J. Thomas Johnson
Chairman
Illinois Gaming Board
160 North LaSalle Street, Suite 300 S
Chicago, Illinois 60601

Dear Mr. Johnson:

I have your letter wherein you inquire whether, under section 28-1 of the Criminal Code of 1961 (720 ILCS 5/28-1 (West 1992)), Illinois manufacturers of gambling devices are prohibited from being licensed to supply such devices to riverboat casinos which operate in Illinois waters. For the reasons hereinafter stated, it is my opinion that Illinois manufacturers may be licensed as suppliers of gambling devices to riverboat casinos, and, when so licensed, their sale or lease and shipment of such devices to licensed riverboat casinos will not violate section 28-1 of the Criminal Code.

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Section 28-1 of the Criminal Code provides, in part:

"Gambling. (a) A person commits gambling when he:

* * *

(3) Operates, keeps, owns, uses, purchases, exhibits, rents, sells, bargains for the sale or lease of, manufactures or distributes any gambling device; * * *

* * *

(b) Participants in any of the following activities shall not be convicted of gambling therefor:

* * *

(4) Manufacture of gambling devices, including the acquisition of essential parts therefor and the assembly thereof, for transportation in interstate or foreign commerce to any place outside this State when such transportation is not prohibited by any applicable Federal law;

* * *

(11) Gambling games conducted on riverboats when authorized by the Riverboat Gambling Act.

(c) Sentence.

* * * Gambling under any of subsections (a) (3) through (a) (11) of this Section is a Class A misdemeanor. * * *

* * *

"

Section 8 of the Riverboat Gambling Act (230 ILCS 10/8 (West 1992)) provides, in part:

"(a) The Board may issue a suppliers license to such persons, firms or corpora-

tions which apply therefor upon the payment of a non-refundable application fee set by the Board, upon a determination by the Board that the applicant is eligible for a suppliers license and upon payment of a \$5,000 annual license fee.

(b) The holder of a suppliers license is authorized to sell or lease, and to contract to sell or lease, gambling equipment and supplies to any licensee involved in the ownership or management of gambling operations.

* * *

(e) Any person that supplies any equipment, devices, or supplies to a licensed riverboat gambling operation must first obtain a suppliers license. * * *

* * *

"

The Illinois Gaming Board has received an application for a supplier's license from an Illinois manufacturer of electronic gaming devices. Heretofore, the applicant has shipped its products only to other States, in accordance with subsection 28-1(b)(4) of the Criminal Code, which clearly permits interstate shipment of gambling devices which are manufactured in Illinois. The question has arisen whether intrastate shipment of such devices would constitute a violation of section 28-1 of the Code in the event that a license is granted, since the section does not expressly except intrastate shipments to persons who may lawfully possess gambling devices in Illinois from the general prohibition against gambling.

The language of section 28-1 is inconsistent with that of section 8 of the Riverboat Gambling Act, which permits persons who are licensed by the Board to sell or lease gambling equipment to riverboat casinos. Subsection 8(d) of the Act, which lists persons who are ineligible to receive a supplier's license, excludes from licensure persons who have been convicted of certain crimes, corporations in which such persons are principals, and members of the Gaming Board, but does not expressly exclude in-State manufacturers or suppliers of gambling devices.

It is presumed that the General Assembly, in enacting various statutes, acts rationally and with full knowledge of all previous enactments. (State of Illinois v. Mikusch (1990), 138 Ill. 2d 242, 249-50.) Where both a general statutory provision and a specific statutory provision have been enacted, either in the same or another Act, which relate to the same subject, the specific provision controls and should be applied. (People v. Villarreal (1992), 152 Ill. 2d 368, 379.) The particular provision must prevail and must be treated as an exception to the general provision, especially where the particular provision is later in time of enactment. (Bowes v. City of Chicago (1954), 3 Ill. 2d 175, 205.)

The general prohibition against gambling in section 28-1 was enacted as part of the Criminal Code of 1961, effective January 1, 1962. (Laws 1961, p. 1983, § 28-1.) The exception

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for interstate shipment of gambling equipment was enacted in 1963. (Laws 1963, p. 1412, effective July 8, 1963.) The Riverboat Gambling Act, however, was not enacted until 1990. (Public Act 86-1029, effective February 7, 1990.) Section 28-1 is a general enactment which prohibits gambling and the manufacture, sale and distribution of gambling devices generally. The Riverboat Gambling Act is a much later, and very specific enactment, which permits gambling aboard licensed riverboats and the licensure of suppliers of gambling equipment for those riverboats.

Consequently, the sale or lease and transportation of gambling devices pursuant to a license issued under section 8 of the Riverboat Gambling Act should be treated as an exception to the general prohibition against the intrastate sale or lease and shipment of gambling devices in section 28-1 of the Criminal Code of 1961. The General Assembly clearly intended that legitimate activities related to riverboat gaming would be excepted from criminal liability. The Board was given broad authority to license riverboat suppliers, and that authority does not, on its face, exclude Illinois manufacturers. Therefore, it is my opinion that the sale or lease and shipment of gambling devices by Illinois manufacturers who are licensed by the Board to supply gambling devices to riverboat casinos to such casinos is implicitly excepted from the general prohibition against the sale and

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distribution of such devices in section 28-1 of the Criminal Code of 1961.

This conclusion is supported by the history of legislation on gambling. It is important to note that no form of casino gambling was permitted in Illinois at the time that subsection 28-1(b)(4) was enacted. Consequently, no intrastate shipment of gambling devices manufactured in Illinois could legally have been made to a recipient in Illinois, because no one in Illinois was authorized to possess such devices for ultimate use. With the enactment of the Riverboat Gambling Act (230 ILCS 10/1 et seq. (West 1992)), however, the General Assembly has authorized the possession and use of gambling devices in Illinois in the limited circumstances prescribed in the Act. It cannot be assumed that the General Assembly, in 1963, anticipated that in 1994 such devices could be lawfully possessed in Illinois, and that it intended to restrict commerce under these circumstances. Rather, the intent of the General Assembly was no doubt to prohibit commerce in gambling devices only to the extent that such commerce conflicted with the then-current law regarding the possession of such devices in Illinois. The change in the substantive law must be considered in determining the scope of subsection 28-1(b)(4) of the Act.

Because section 28-1 of the Criminal Code is a penal statute, it must be strictly construed. (People v. Carlock

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(1981), 102 Ill. App. 3d 1100, 1102.) Where the literal application of the terms of a penal statute would lead to an absurd consequence, their application will be limited to avoid such a consequence, if the legislative purpose will be satisfied by the limited interpretation. (City of Elmhurst v. Buettgen (1946), 394 Ill. 248, 253.) A literal interpretation of the terms of section 28-1 could lead to a situation in which legitimate Illinois businesses would be prohibited from competing with businesses from other States in supplying equipment to licensees conducting legalized gambling in Illinois, a result which must have been unforeseen in 1962. To exclude Illinois businesses from competing in this market would constitute an absurdity, which it cannot be presumed that the General Assembly intended. Therefore, an interpretation of section 28-1 of the Code which avoids this absurd consequence must be adopted.

Lastly, it should be noted that a construction of subsection 28-1(b)(4) of the Criminal Code which would prohibit Illinois manufacturers from receiving a supplier's license and selling or leasing gambling devices to licensed riverboat casinos in Illinois would raise significant questions concerning the denial of equal protection of the laws to such manufacturers. Such a construction would appear to discriminate unreasonably against Illinois manufacturers without a rational basis for doing so. (See County of Bureau v. Thompson (1990), 139 Ill. 2d 323.)

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Although it is not necessary to address this issue fully, given the result I have reached through applying the canons of statutory construction, the potential constitutional infirmity is nonetheless apparent.

In summary, it is my opinion that Illinois manufacturers of gambling devices may be licensed as suppliers pursuant to section 8 of the Riverboat Gambling Act, and, if properly licensed, may sell or lease and transport gambling devices to riverboat casinos operating in Illinois waters without violating section 28-1 of the Criminal Code of 1961.

Respectfully yours,

A handwritten signature in black ink, reading "Roland W. Burris". The signature is written in a cursive style with a large, sweeping initial "R".

ROLAND W. BURRIS
ATTORNEY GENERAL