

John Warren Kindt
MBA, J.D., LL.M., SJD

Professor
University of Illinois
Box One, 350 Wohlers Hall 1503 West Brookside Lane
Champaign, IL 61820 Mahomet, IL 61853
Phone (217) 433-0075 Fax (678) 719-8621

In Re: Academic Input per 940 C.M.R. 34.00 Daily Fantasy Sports Contest Operators in MA

December 19, 2015

Attorney General Maura Healey
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

RECEIVED

DEC 28 2015

OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE BUREAU

Dear Attorney General Healey:

The offices of my academic colleagues and myself have been asked to provide pro bono input regarding the provisions of 940 C.M.R. 34.00 Daily Fantasy Sports Contest Operators in Massachusetts.

Our University of Illinois office is listed on the first page of "Sources of Information" by the U.S. National Gambling Impact Study Commission, the Federal commission supported by virtually the entire Massachusetts Congressional Delegation. For three decades, associated academic colleagues and I have provided research and testified many times before Congress and state legislatures on Internet gambling issues (e.g., the 3/25/15 Congressional hearing on the Restoration of America's Wire Act (RAWA) and the 4/5/06 Congressional hearing which prompted enactment of the Unlawful Internet Gambling Enforcement Act (UIGEA), including the alleged DFS loophole).

General Comments on 940 C.M.R. 34.00: In summary, 34.00 *et seq.* look impactful from a regulatory perspective. However, due to the large potential for abuses (as have already been reported in numerous news reports) and the large socio-economic damages paralleling anti-trust, there should be added 34.00 provisions providing for monetary penalties paralleling the treble damages awarded in anti-trust cases.

34.03 Definitions: Daily Fantasy Sports Operator or "DFS0": Perhaps paragraph 4 needs a monetary limitation, for example which reads "not to exceed \$20." This amount would be similar to other products advertised frequently for \$19.95 (plus shipping and handling). Otherwise, DFSOs can have very high amounts for "lowest individual entry fees."

4. The Prize or Prizes offered are of no greater value than (\$20 or \$35?) the individual entry fee charged to a single participant for entering the contest; or

This change would conform to the intent of UIGEA to have only minimal fantasy sports opportunities.

34.03 Definitions: Prize: The wording defining a “prize” should be expanded in scope—per a suggestion of: “Anything of value or other consideration, including but not limited to money, contest credits, merchandise, or admission to another contest.”

34.03 Definitions: Highly-experienced Player: The wording should be more inclusive—per a suggestion of: “Any DFS player who has 1) entered more than 1,000 contests offered by multiple DFSOs or by a single DFSO; or”

34.05(2)(c) Protection of Consumer Funds: A reporting period of seven days would parallel with 34.15(1)(b)—per a suggestion of: “(2)(c) establish procedures for responding to and reporting on complaints within seven days by DFS Consumers”

34.08(3)-(4) Restrictions on Advertising: There needs to be more recognition of the trend toward the proliferation of collegiate bowl games. Accordingly, 34.08(3) should delete the last phrase and thereby read: “DFSOs will not advertise or run promotional activities at amateur, school or college sporting events.”

For similar reasons, in 34.08(4) there should be the elimination of the last sentence beginning “Nor will it place”

34.09(3) Promotional Offers: The time period of 90 days for compliance in 34.09(3) is much too long and will be abused. The time period should be 30 days or less. (If the DFSOs can monitor instant games and DFS, a fortiori, the DFSOs have the technology to comply quickly to regulatory time limits.)

34.10(1) Protections for Problem Gamers: In 34.10(1) the second sentence, there appears to be a typo with a missing “to” and thus, the second sentence should end “DFS Consumers to do so.”

34.10(5)(b) Protections for Problem Gamers: In 34.10(5)(b) perhaps the last phrase in the sentence should add “alimony” to read: “DFS Consumer to pay unmet child support and/or alimony obligations.”

34.10(6) Protections for Problem Gamers: Why is the limitation so high in 34.10(6), that is, “\$1,000 in any calendar month”? Couldn’t the DFSOs manipulate this to establish high limits for everyone? A lower limit of \$200 would seem more reasonable.

34.12(1) Fairness of DFS Contests: In 34.12(1), there should be no initial exception for DFSO affiliates to “play in a private contest.” This exception has the appearance of impropriety and evokes images of insider trading. If these regulations are effective, there may be no reason not to

allow private play in the future—but exceptions should not be allowed at this juncture while MA is trying to establish the initial regulations. Therefore, the sentence in 34.12(1) beginning “However” should be deleted.

34.12(3) Fairness of DFS Contests: The exception in 34.12(3) is much too broad and is an open door to abuse and should be deleted. (A sports person like Pete Rose would drive a truck through this exception.) Thus, at the end of sentence one there needs to be a deletion of the words “in the sport in which they participate.” Otherwise, the door is open to question the integrity of all sports in general.

34.12(4) Fairness of DFS Contests: In 34.12(4), the words “to provide proprietary or non-public information to any DFS player” should be more inclusive and given current investigations involving “DFS insiders,” should perhaps read: “to provide proprietary, non-public, or other inside information to any DFS player.”

34.12(11)(d) Fairness of DFS Contests: In 34.12(11)(d), the “3%” limitation should be reduced to perhaps 1% or less because in the playoffs, including the NFL’s Super Bowl, the upper limits would be enormous.

If you have any questions or if I can otherwise be of service, please do not hesitate to contact me.

Sincerely,



Prof. John Warren Kindt, Em.
Bus. & Legal Policy
University of Illinois