

NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES
COMMITTEE ON CASINOS
LA JOLLA, CALIFORNIA
JUNE 6, 2014
1:30 P.M. – 2:30 P.M.
MINUTES

The Committee on Casinos of the National Council of Legislators from Gaming States (NCLGS) met at the Hyatt Regency La Jolla in San Diego, California, on Friday, June 6, at 1:30 p.m.

Rep. Helene Keeley of Delaware, committee chair, presided.

Other legislators present included:

Sen. Rick Murphy, AZ
Rep. David Richardson, FL
Sen. Maria Sachs, FL
Rep. Jim Waldman, FL
Sen. Greg Brower, NV
Rep. Lois Delmore, ND
Sen. William Coley, II, OH
Rep. Kevin Killer, SD

Others present were:

Susan Nolan, Nolan Associates, NCLGS Executive Director

MINUTES

The Committee accepted the minutes of its last meeting on January 10, 2014, in Hollywood, California.

SPORTS WAGERING LITIGATION

Daniel Wallach, Shareholder, Becker & Poliakoff, reported on the current status of federal sports wagering litigation. He said that the State of New Jersey is challenging the constitutionality of the federal ban on state-sponsored sports wagering. By way of background, he said the federal ban, called the Professional Amateur and Sports Protection Act of 1992 (PASPA), prohibits the states from legally authorizing or regulating sports wagering in their jurisdictions, with several important exemptions. He said that states with a sports wagering scheme in place between 1976 and 1990 are grandfathered in. Mr. Wallach said that as a practical matter, sports wagering was limited to Delaware, Oregon, Montana, and Vermont to whatever practice was in place at the time of PASPA enactment.

Mr. Wallach said that New Jersey is trying to implement its own sports wagering law and legalize sports betting at its 12 casinos and four racetracks. He said that in response to this initiative, four professional sports leagues and the National Collegiate Athletic Association (NCAA) brought suit in federal district court, seeking to enjoin the implementation of the New Jersey sports wagering law. He said the leagues won the first round before the U.S. District Court in the District of New Jersey.

Mr. Wallach said that more recently, in September 2013, the U.S. Court of Appeals for the Third Circuit upheld the constitutionality of PASPA in a divided vote of two to one. He said that the dissenting vote was Judge Thomas Vanaskie, who concluded that PASPA violates principles of federalism. Mr. Wallach said that New Jersey, using Judge Vanaskie's dissenting opinion, has taken the battle to the U.S. Supreme Court and that in the middle of February, Governor Chris Christie filed a petition for writ of

certiorari. He said that two state legislators also filed a writ of certiorari, as well as the New Jersey Thoroughbred Horse Racing Association.

Mr. Wallach said that the leagues then filed a response brief a month ago and that earlier this week the New Jersey petitioners filed their reply briefs. He said that the issue is now teed up for the Supreme Court to decide whether or not to review the New Jersey constitutional challenge to PASPA. He said that this particular case is scheduled for the Supreme Court June 19 conference. He said that the Supreme Court conducts conferences every two weeks in which they consider anywhere from ten to 20 petitions and then issue an order the following Monday as to whether or not they will grant certiorari and consider the cases.

Mr. Wallach said that on Monday, June 23, the Supreme Court will announce if it is willing to consider the case. He said it could go either way, that statistically chances are not good, as the Supreme Court historically grants less than 50 percent of all petitions. He said that this petition is much more colorable than a typical one, as it raises important federalism questions that transcend sports wagering. He said the argument has raised concerns relating to an anti-commandeering doctrine rooted in the 10th Amendment, which goes to the dual sovereignty of the states and the federal government—that Congress cannot regulate or prohibit states from regulating the field when there is no underlying federal regulation or deregulation scheme in place. He said the doctrine of preemption—that federal laws reign supreme over state laws—only comes into play when Congress is already regulating something—when it "covers the field."

Mr. Wallach predicted that the Supreme Court will grant certiorari. He said that PASPA stands alone, as there is no other federal statute on the books involving the regulation of the states under the Commerce Clause—where Congress has chosen to prohibit the states from authorizing an activity when Congress does not regulate the field. He said that the issue of federalism that Judge Vanaskie seized upon could hold tremendous sway with the Conservative wing of the Supreme Court. He noted that in Supreme Court practice, the Rule of Four prevails—that it takes four of the nine justices to decide whether a case should be accepted and that the conservative wing of the Court comprises four justices, Roberts, Scalia, Thomas and Alito.

STATE GAMING CONSUMER PROTECTION LAWS, I.E. GAMING AGES, ALCOHOL RESTRICTIONS
Jonathan Griffin, Policy Specialist, National Conference of State Legislatures (NCSL), said that consumer protections in casinos relate to how you regulate three areas, i.e., alcohol sales and consumption, underage gambling, and how the *Middle Class Tax Relief and Job Creation Act of 2012* affects the use of electronic benefit transfer (EBT) cards in casinos.

Mr. Griffin noted when presenting an American Gaming Association (AGA) map of states relating to alcohol sales in casinos, that 13 states offer free drinks in casinos, that in the Midwest ten states do not allow this practice, and that Massachusetts will be offering free drinks in the advent of casinos. He said that at present many casinos don't offer free drinks, in part because times have changed as evidenced by the fact that airlines no longer give free drinks to consumers. He said that prior to 1990 every state that had casinos gave free drinks. He said that since 2000 there have only been four states to add casinos, i.e., New York, Pennsylvania, Florida, and soon-to-be Massachusetts—and that they are surrounded by states that offer free alcohol so they are doing so to compete. Mr. Griffin said that Kansas doesn't allow free drinks anywhere, that you can't have buy-one, get one free drinks, and that Kansas used to not even allow happy hours. He said that in Ohio, especially when casinos are in downtown areas, bars and restaurant lobby groups have stepped up efforts to make sure that they will not lose business.

Mr. Griffin said that general perceptions that free drinks lead to more DUIs has been proven untrue by a Mississippi study that found that DUIs had gone down every year since free drinks in casinos had been in existence. He said that the notion that free drinks lead to overdrinking has been addressed by bartender/server certification programs. He showed on a map from the Alcohol Policy Information System (APIS)—a National Institute of Health organization—that nine states have voluntary certification regulations and that seven have mandatory certification programs. Regarding the other six casino gaming states (Kansas, Mississippi, Missouri, New Jersey, Oklahoma, and West Virginia) that don't have policies regarding drinking, he said that the American Gaming Association (AGA) recommends that AGA casinos have responsible alcohol programs. He said that training for intervention procedures (T.I.P.S.) and the right to remove intoxicated patrons also are mitigating factors.

Mr. Griffin said that every state has a penalty for underage gambling, such as not being able to keep money that was won, misdemeanors, etc. He said that relating to licensees, 12 states make underage gambling a misdemeanor, five make it a felony, and seven have miscellaneous approaches. He said that Colorado, Louisiana, and Mississippi have penalties that equal a misdemeanor; Maryland has a \$5,000 fine; and Massachusetts law has the stiffest penalties, with an individual offender working in an establishment given a \$10,000 fine and a year in jail for a first offense and a \$25,000 fine and two years in jail for a subsequent offense. He said that Massachusetts penalizes a business establishment \$500,000 for a first offense and \$1 million for a subsequent offense. He noted that New York and Pennsylvania are not specific and leave penalties, which are not soft, up to a regulatory penalty board.

Mr. Griffin said one approach for greater penalties for individuals is taking away a person's driver's license. He said New Jersey takes it away for six months. He said that Pennsylvania is looking into this option also. Mr. Griffin said that facial recognition technology—for exclusion lists and generally—such as used in Maryland, explored by Pennsylvania and also internationally in Australia and New Zealand, is another approach. He said that security being allowed to detain underage patrons is another approach, though it negates the chance of any penalties. Mr. Griffin said that some states have codified this approach, and that Louisiana, Maine, and New Jersey have a prescribed time limit detention with police officials brought to the establishment.

Mr. Griffin said that the Middle Class Tax Relief and Job Creation Act was enacted February 2012 and provided that states must maintain policies/practices and a plan for mitigating against federal benefit money being used for gambling purposes. He said that there is a question as to how much that works, as ATMs are available in small stores close to casinos. He said that seven states,—Arizona, California, Colorado, Indiana, Maine, Massachusetts, and Washington—had laws in place prior to enactment. Mr. Griffin said that nine states without commercial casino operations prohibit the use of EBT cards in casino ATMs, in relation to state-tribal regulations re ATM use. He said that eleven prohibit their use in commercial casinos. He noted that two states—Idaho and Maryland—passed legislation in 2012 and that two others—Alabama and Michigan—did in 2014.

Mr. Griffin said that three of the largest casino states,—Nevada, New Jersey, and Pennsylvania—do not have these laws in place. He said that actually four of the top five, with the exception of Indiana, do not. Mr. Griffin said that 24 states do not have laws in place because among other reasons, a five percent loss in funds from EBTs is substantial. He said that states do have individuals sign a promise that they will not use federal benefit money for gambling and penalties for doing so are in place. He noted that New Mexico has just quickly passed prohibiting legislation.

EMERGING POLICY ISSUES FOR STATE LEGISLATURES: CASINO TAXATION AND I-GAMING POLICY
Michael Pollock, Managing Director of Spectrum Gaming, said that the title of his presentation was "Twenty-Five is the New Seventy" and that this related to gross gaming revenue (GGR) tax rates, not age. He said that this issue has emerged in certain states, including Delaware, but that it needs to

emerge in more states and that significant serious action needs to be considered. He said that tax rates have increased significantly in the roll-out of legalized casinos in the various states and that in some states it actually has exceeded the 70 percent mark. He said that New Jersey has an eight percent GGR basically because New Jersey legalized casinos in 1976, when Nevada was the only other state with casinos and it had a 6.25 GGR. He said that in response New Jersey set the highest rate in the nation thinking it would ensure political success. He said that this same logic has prevailed in state after state and that it is time to seriously consider change.

Mr. Pollock said anecdotally that when Maryland first legalized casinos, it had a total of four applicants for five licenses. He said that when asked how to get more interest in the licenses, his response is to say look at your tax rates.

CALIFORNIA CASINO NO-SMOKING EFFORTS/E-CIGARETTES

Narinder Dhaliwal, Project Director, California's Clean Air Project said she previously presented to the NCLGS Committee on Casinos and Executive Committee a resolution encouraging 100 percent smoke-free gaming venues, which NCLGS adopted. She said that her group in California has been able to move forward with tribal gaming entities regarding going smoke free. She said the Tribal General Manager of Winn River casino had allowed California's Clean Air Project to conduct air monitoring and to count the number of smoking and non smoking patrons. She said that over the course of six years they had monitored smoking matter in the air in the casino. She reported in 2008 between 11 and 13 percent of patrons in the casino were actively smoking and that by 2012 the number had dropped to between 9 and 10 percent. She said that on March 14, 2013, Winn River adopted no-smoking policy in the casino and the hotel. Ms. Dhaliwal said that after going smoke-free, Winn River increased 25 percent in food and beverage sales and 25 percent in bingo revenue. She noted that next on the agenda is to conduct an economic impact study which will hopefully encourage others to collect the same data.

In response to a question regarding how casinos have handled the increase in the use of e-cigarettes. Ms. Dhaliwal responded that the California labor code does not allow indoor smoking. She said that county-by-county her organization has reviewed labor code policies and worked with the county to strengthen their laws to include banning any e-products. She said currently the Winn River casino allows e-cigarettes because the county in which it resides has yet to ban them. She said she believes that in the future when the county bans e-products that the casino will follow suit.

ELECTRONIC SWEEPSTAKES CAFES ENFORCEMENT ISSUES

Sen. Steven Geller, Partner, Greenspoon Marder, P.A., explained that electronic sweepstakes cafes continue to operate in a gray area of sweepstakes and gambling laws. He said many Internet cafes have changed prizes to small level items instead of cash or gift cards to avoid the accusation of violating gambling laws. He said that adult arcades have argued the "skilled stop" on games maintain there is skill involved in playing. He said that experts have reported that the average person does not have reflexes good enough to use the "skilled stop" on these games and that the games are targeted to senior citizens.

ADJOURNMENT

There being no further business, the meeting adjourned at 2:30 p.m.