

NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES
STATE-FEDERAL RELATIONS COMMITTEE
LAS VEGAS, NEVADA
JANUARY 9, 2015
4:15 P.M. – 5:30 P.M.
MINUTES

The State-Federal Relations Committee of the National Council of Legislators from Gaming States (NCLGS) met at the Paris Las Vegas Hotel and Casino in Las Vegas, Nevada, on Friday, January 9, at 4:15 p.m.

Sen. Greg Brower of Nevada, acting committee chair, presided.

Other legislators present included:

- Rep. Helene Keeley, DE
- Sen. David McBride, DE
- Sen. Oscar Braynon, FL
- Sen. Bill Galvano, FL
- Rep. Louie Luchini, ME
- Sen. William Coley II, OH
- Sen. Anastasia Pittman, OK

Others present were:

- Susan Nolan, Nolan Associates, NCLGS Executive Director
- Andrew Williamson, Nolan Associates

MINUTES

The Committee accepted the minutes of its last meeting on June 6, 2014, in La Jolla, California.

TRIBAL INTERNET GAMING INITIATIVES

Commissioner Norman Des Rosiers, representing the Federated Indians of Greater Rucheria, reported that in California within the last few months, the Santa Ysabel Tribe had launched live Internet bingo with no state or federal legislation other than the Indian Gaming Regulatory Act (IGRA). He stated that the use of the Internet is a technological aid that is allowed under the Indian Gaming Regulatory Act. He reported that the state of California filed for a temporary injunction in November and the injunction was granted in early December. He said that the Court ruled in favor of the state having the temporary restraining order until the issue goes to trial.

Commissioner Des Rosiers reported that the State of California argues that this gaming is a violation of IGRA, and that it is not Class II but Class III gaming and is, therefore, a violation of California's compact. He said that from 2007 to 2010, he served as Vice Chairman on the National Indian Gaming Commission (NIGC) in Washington, DC. He reported that over two years of that service was spent working with gaming manufacturers, operators, test lab personnel, regulators, tribal leaders and lawyers to develop technical specifications for Class II electronic gaming devices. He stated that it was important to distinguish between a Class II and Class III gaming device due to the regulatory implications.

Commissioner Des Rosiers said that while he served on the Commission, it redefined the definition of technological gaming. He stated that in his opinion the judge and the State of California did not understand the distinctions and that this is an issue for the tribe to present at trial. He said that if it is decided that the gaming in question is Class II and does not fall under the California compact, then the potential exists for anyone who is in a state with federally-recognized tribes to engage in Internet gaming without any state legislation or oversight.

Commissioner Richard Schuetz of the California Gambling Control Commission stated that the citizens of the state are not demanding they get Internet poker. He indicated that this initiative is being driven by commercial interests and he reported further that results of internal polls in California demonstrate that Internet poker is not really an issue.

Commissioner Schuetz said that when Internet gaming is discussed, the public expresses concerns ranging from money laundering to underage gambling. He said there is considerable misinformation and ignorance regarding Internet poker in the state. He said the projection for Internet gaming in California is in the area of \$600 million in revenues, and with a five percent tax rate, the state would collect approximately \$30 million in taxes. Mr. Schuetz stated that while \$30 million could help the state, it would not resolve any of the major problems in a state with an annual budget of \$156 billion.

Commissioner Schuetz reported that when examining the recent history of Internet poker initiatives in states like Nevada, New Jersey, and Mississippi, they were all driven by economics. He said that in contrast, California is in good shape financially so the fiscal argument is not that critical. He also stated that dismal results in New Jersey and other states that have introduced Internet poker have caused them to withdraw their support for this initiative.

Commissioner Schuetz said there is also the “bad actor” issue that complicates the discussion. He said the Internet gaming bill needs a two-thirds majority in order to pass in the California state legislature so it is much easier to stop a gambling expansion bill than to get one passed.

NATIONAL INDIAN GAMING COMMISSION (NIGC) ACTIVITIES

Associate Commissioner Dan Little of the National Indian Gaming Commission (NIGC) reported on NIGC activities. He stated that the NIGC chairman’s position is currently vacant and has been since September of 2013. He said that the Commission’s Vice Chairman, Jonodev Osceola Chaudhuri, who is acting chairman, had been nominated by President Obama, but the nomination had not been acted on when Congress adjourned in December. Associate Commissioner Little said that President Obama had re-nominated Mr. Chaudhuri and he will continue to serve as acting chairman until Congress acts.

Associate Commissioner Little stated that the General Accountability Office (GAO), which is an arm of the U.S. Congress, has been conducting research on the performance of the National Indian Gaming Commission (NIGC) since it was established 25 years ago. He said that NIGC has been cooperating with the GAO and the GAO has visited various tribes throughout the country. He stated that the GAO report is due to be published in March of 2015. Associate Commissioner Little said he is interested in having this independent assessment of the Commission and will see if Congress will decide to change NIGC as a result.

Associate Commissioner Little said he wanted to address some tribal casino issues. He noted that Mr. Des Rosiers spoke earlier about the online gaming issue currently taking place in California. He said he did not want to comment on that particular case because of its status as an ongoing investigation, but said it is an example of the Commission working well with the State of California. He noted that Indian gaming is considered a three-tiered regulatory structure and the California situation proves that the industry is best protected when all concerned parties do their part.

Associate Commissioner Little said another issue of concern was the Commission's decision to temporarily close down the Picyune Rancheria of Chukchansi tribe casinos in California due to a leadership dispute. He reported that it was the opinion of the Commission that this dispute had led to some public safety issues so a temporary closure was necessary. He noted this issue is currently pending in court.

Associate Commissioner Little stated that the Commission is seeking to work with the tribes and conducting voluntary compliance assessments in order to avoid compliance issues. He said the tribes have requested these assessments, which enable the commission to make recommendations for adjustments as appropriate so that enforcement issues are avoided.

Associate Commissioner Little concluded by stating that the Commission works well with states throughout the country. He reported that the issues the Commission addresses are of mutual concern to the states and the tribes. He said that communication with all governments, both tribal and state, has been excellent.

STATE COMPACTS/TRIBAL RECOGNITION/STATE BIA POWERS

Sen. Steven Geller, Partner, Greenspoon Marder P.A., reported on various state compacts. He said the Jicarilla Apache Nation of New Mexico had recently reached an agreement with the State of New Mexico. He noted that this was a surprise since they are the smallest gaming tribe with the lowest revenue in the state. He said the agreement will require the tribe to pay a two percent tax for up to \$6 million of revenue, with all additional revenue taxed at eight and one-half percent.

Sen. Geller said that in Oklahoma, gaming exclusivity fees have dipped for the first time. He stated that this decline is due to the many technological advances in Class II games such that there is no longer a significant difference between Class II and Class III. As a result, he said that many of the Indian tribes in Oklahoma have voluntarily agreed to switch from Class III to Class II because they do not pay the state revenue for Class II machines. He indicated that this shift could start taking place in more states.

Sen. Geller said that in Massachusetts there are two separate tribes, which are the Mashpee Wampanoag tribe, which has been trying to get recognized but has so far been unsuccessful, and the Wampanoag tribe, which wants to open a casino on Martha's Vineyard. He noted, however, that Massachusetts has argued that when Gov. Deval Patrick signed the expanded gaming act in 2011, the Wampanoag tribe specifically relinquished the right to operate a casino.

Sen. Geller said that the Tohono O'odham Tribe in Arizona was recently granted permission by the Department of the Interior to utilize land in Glendale, but other Arizona tribes disputed the Tohono O'odham's rights to the land.

Sen. Geller stated that in Idaho the leaders of core Idaho tribes have been asking the state to shut down instant racing, which they originally supported. He said they realized that its effects were not what they had anticipated.

Sen. Geller said that in Wisconsin, the Menominee Tribe is lobbying to obtain state approval for an off-reservation casino. In conclusion, Sen. Geller noted that the Yankton Sioux Tribe, Rosebud Sioux Tribe, and the Standing Rock Sioux Tribe are all leading opposition to the Keystone pipeline, as they argue that it will damage their water supply.

Toni Cowan, Attorney, Catania Gaming Consultants, stated that a decision needs to be made whether the established administrative agency or the courts are going to preside over issues in connection with Internet gaming and tribes. She stated her opinion that this area should be regulated by the administrative agency charged with the responsibility, and not by the courts.

Ms. Cowan said that according to the pertinent rules, Indian gaming should only take place on Indian land. She said that if someone is on Indian land and is making a Class II wager and is playing against someone in another part of the state, as long as they are both on Indian land they are within the rules. She said this becomes an issue of concern when someone playing online poker at home is doing so through a connection to a tribal casino. She noted that while this is legal in Nevada, it is her opinion that it conflicts with the rules established by IGRA.

TRIBAL-RELATED EDUCATIONAL FUNDING/SALES TAX

Sen. Anastasia Pittman reported on lottery educational funding in Oklahoma. She said that 45 percent of the funds are placed in the Oklahoma Education Lottery Trust Fund and are designated to be spent on K-12 public education initiatives. She said these initiatives include, but are not limited to, compensation and benefits for public school teachers and school support systems.

Sen. Pittman said that another 45 percent of the trust is distributed in the form of tuition grants, loans, and scholarships to citizens within the state. She said that these programs enable citizens to attend colleges and universities in the state, either public or private, but they must be accredited institutions. She said that additional money is distributed to improve the structure of educational facilities for elementary school districts, independent school districts, and the Oklahoma state system for higher education, including career and technological programs.

Sen. Pittman stated that Oklahoma has 39 federally recognized tribes on Indian trust land. She said because the tribes have exclusive regulatory control over their Indian trust land, the state has faced questions regarding taxation being imposed on tribes that are solvent. She reported that tribes can consent to enter into a compact agreement with the state and both parties have worked very well together. She gave as an example the Cherokee Nation Casino in Oklahoma which generates \$1.6 billion in economic impact and provides \$400 million in salaries. She said that employees are both tribal and non-tribal. She noted further that the tribe and the state have entered into compact agreements to fix infrastructure, including roads and bridges.

Sen. Pittman reported that a current issue in Oklahoma involves the Potawatomi Nation, which is seeking to annex land from the county. She said the tribe currently has the ability to impose its own taxes and that it operates its own gas stations, parks and museums. She stated that the

City of Shawnee opposes regulatory taxes and is not allowed to tax on Sundays, but the Potawatomi Nation does so and argues it can do so because of its sovereignty over the land, which exempts it from compliance with county and city regulations.

Sen. Pittman reported that Oklahoma has also experienced success stories, such as in Lawton, where the city has entered into a compact agreement with three tribes. She said they are working together on infrastructure including construction of a new McDonalds. She noted that there have been some jurisdictional issues, and sometimes the state has tried to tax the tribes on products, such as tobacco, which are sold to non-tribal members. In conclusion, Sen. Pittman noted that the majority of the tax revenue goes to the Oklahoma Education Lottery Trust Fund.

STATE, FEDERAL, INTERNATIONAL INTERNET GAMING STRATEGIES

Sarah Koch, Attorney at Ifrah Law, reported on the pros and cons of Internet gaming strategies at the state, federal and international levels. She explained that the United States has implemented a different gaming strategy than most other countries. She observed that in the states that have implemented Internet gaming, it has been tied to a land-based casino. She said an advantage of this type of arrangement is that it then becomes easier to get necessary laws passed by state legislatures. She said that another advantage stems from the cooperation by the casinos as they see they can be the exclusive providers of this service rather than competing with online providers. She said some of the negatives to this type of arrangement are that casinos and online operators split their revenues up front and the figures are not made public because the division is done pursuant to contract. She said another con is that some online operators do not immediately reinvest their money in attracting new customers and improving games.

Ms. Koch stated that another issue affecting casinos in many parts of the United States is that they are struggling financially and when they struggle, so do their online partners. She reported that this has been the case in Atlantic City where two Trump properties declared bankruptcy in the past year and their online partners have been unable to operate, either by choice or because they have lost the ability to do so in the state.

Ms. Koch reported that Delaware is the only state to have offered Internet gaming through the lottery. She said this creates a single provider system for the gaming product with the benefit of taxing at the higher lottery rate rather than at the gaming level. She said, however, that a negative is the lack of competition and transparency, since this is governed by contract as opposed to legislation and regulation. She said that compared to Nevada, where contracts are for poker only, in Delaware contracts cover casino gaming and poker and operate on an open system in which different operators and casinos can compete against each other.

Ms. Koch said that New Jersey has implemented the most expansive Internet gaming strategy, the advantage of which is that it has positioned itself to be a leader on the national level because it has regulatory experience regarding the industry. She noted, however, that it requires significant legislative and regulatory effort to set up such a system.

Ms. Koch said that legislators can use lessons learned from these different systems in order to decide what system is best for their respective states. She stated that if states do not act, the federal government might step in and take action. She reported that the federal government has already proposed poker-only legislation.

Congressman John Porter, President & CEO, Porter, Gordon, Silver, said that regulation has been the key to success in Nevada, New Jersey and in tribal gaming. He said online gaming is one of the safest and most secure ways of gaming because of its system of checks and balances. He acknowledged that while there is room for abuse, there can be abuse in any endeavor, and not just Internet gambling.

Congressman Porter said he wanted to provide a proactive approach to Internet gaming and acknowledged that additional revenues were overstated. He noted that when examining Internet gaming, it is important to be conservative in estimating revenue.

Congressman Porter reported that for states that are interested in Internet games, two things are paramount. He said that they are first, to be able to provide safe and secure playing for your constituents, and second, to ensure it strengthens operators and/or tribes with an additional value-added approach. He said he encourages states that are interested in Internet gaming to take a conservative approach and move forward based on relevant facts.

Congressman Porter reported on Internet gaming activity at the federal level and said that from 2008 through 2012 there was an effort to establish federal regulation of Internet gaming. He indicated there had been concern regarding the lack of lobbying efforts to oppose such regulations by the industry, lotteries and tribes.

Congressman Porter reported that in the last two years there has been a movement towards protecting state rights in regards to Internet gaming and this movement has gained momentum within the last six months. He noted that activities within the last two months have led to a strong and diverse coalition made up of industry, state lotteries, and tribal nations in order to successfully prevent the federal government from prohibiting states from making their own rules in respect to Internet gambling. He said that while this effort was successful, that with a new Congress there will likely be future efforts to redefine the Wire Act.

Congressman Porter said debates are taking place in Pennsylvania, New York, West Virginia, and Minnesota, and that lotteries should remain strong and be able to make the decisions they need without interference from Congress regarding lotteries and the gaming industry.

INTERSTATE ONLINE POKER COMPACTS, POKER NETWORKING, MULTI-STATE SYSTEMS LINKING CASINOS

Sarah Koch reported that limited progress has been made in this area because no states have recently joined the interstate compact. She said her firm was involved in establishing the Delaware-Nevada interstate agreement and reported that they were quickly able to reach mutually agreeable conclusions for minimum standard requirements between the states. She stated that New Jersey has not joined the compact and indicated that this could be because of either political issues or the fact that only one of several gaming operators in the state is licensed to offer Internet gaming in Delaware and Nevada.

Toni Cowan, Attorney, Catania Gaming Consultants, stated that a number of companies are at various stages of the application process to operate Internet gaming in Nevada. She noted the importance of transition and the questions that follow with a transition to Internet gaming, such as what types of Internet gaming will be offered, what types of networks are going to be

needed, and have such networks been developed yet? She said these are the types of questions that companies who are interested in entering this market need to examine.

Ms. Cowan said that Native American tribes have an advantage in Internet gaming because NIGC encourages the use of technological aids to increase audience. She said this is of particular importance for the tribes located in rural areas. She indicated that this is a way to benefit all tribes and not just the small percentage of those directly involved in Indian gaming.

ADJOURNMENT

There being no further business, the State-Federal Relations Committee meeting adjourned at 5:30 p.m.