

NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES
STATE-FEDERAL RELATIONS COMMITTEE
LA JOLLA, CALIFORNIA
JUNE 6, 2014
3:30 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 Hyatt Regency La Jolla in San Diego, California, on Friday, June 6, at 3:30 p.m.

Rep. James Waldman of Florida, committee chair, presided.

Other legislators present included:

Sen. Rick Murphy, AZ
Rep. Helene Keeley, DE
Rep. David McBride, DE
Rep. David Richardson, FL
Sen. Greg Brower, NV
Rep. Lois Delmore, ND
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.

INDIAN GAMING REGULATORY ACT (IGRA), TRIBAL GAMING COMPACTS, AND ONGOING NATIONAL INDIAN GAMING COMMISSION (NIGC) INITIATIVES

Associate Commissioner Dan Little, of the National Indian Gaming Commission, reported that NIGC is tasked with providing federal oversight to Indian gaming tribes operating facilities in the United States. He said that IGRA created the NIGC and provided framework for regulating gaming on Indian land. He said IGRA created a 3-tier regulatory structure consisting of tribes, states, and the federal government. Associate Commissioner Little said each sovereign in the framework plays an important function in maintaining a strong, well-regulated industry. He said the mission of NIGC to regulate gaming, shield Indian tribes from corrupt influences, and ensure the tribes are the primary beneficiary of Indian gaming revenue.

Associate Commissioner Little said the state of Michigan vs. Bay Mills Indian Community was an example of a tribe's sovereign immunity being challenged when acting in commercial capacity outside of Indian land. He said the court decided the state could not sue the tribe, regardless of where it operated its business due to the principle of sovereign immunity. Associate Commissioner Little said the majority acknowledged in their opinion that the state could seek injunctive relief against tribal officials and pursue criminal prosecution against individuals on tribally-owned property not considered Indian lands for gaming purposes.

IGRA & OFF-RESERVATION GAMING ISSUES

Joe Valandra, Chairman & CEO, Great Luck, LLC, said one of the most important tasks handled at the NIGC is the determination of Indian land.

He said two supreme court cases that had gained attention, *Carcieri v. Salazar*, and *Salazar vs. Patchak*, challenged Indian-land determinations. He said it is increasingly uncertain whether lands taken into trust by DOI can be challenged. He said this is a very important issue as tribes acquire new land and expand gaming operations. He said noted sovereign jurisdiction will be questioned, especially in the case of Internet gaming on tribal land. He said moving forward the boundary lines between sovereigns will need to be determined. He also said that how to regulate will need to be determined in these circumstances. He said regulation facilitates the growth of an industry. He said the market demands access to Internet gaming and the regulators and legislators must get ahead of regulating the industry or it will fail.

TRIBAL INTERNET GAMING DEVELOPMENTS

Victor Rocha, owner of Pechanga.net, said California tribes have been active in Internet gaming for the last four years. He said two bills supported by tribes are making headway in the California legislature (SB 1366 and AB 2291) in regards to Internet gaming. He said tribes in California are pursuing online gaming as a commercial endeavor as opposed to Indian gaming because of limitations under IGRA. He said approaching Internet gaming commercially allows tribes to bypass legalities when dealing with IGRA and on-reservation gaming.

Norm DeRosiers, Gaming Regulatory Consultant, said the California bill included language that a tribe waives its sovereign immunity for purposes of enforcement of the law in accepting a commercial gaming license.

Associate Commissioner Little noted the possibility for IGRA implications if Internet gaming takes place on a reservation. He said that many questions should be raised before legislation is passed. He said there will be disagreements as to where Internet gaming actually takes place. He said Internet games are played on a server, not necessarily where the game physically takes place.

FEDERAL INTERNET GAMING DEVELOPMENTS

Sen. Steven Geller, Partner, Greenspoon Marder, P.A., former NCLGS President reported that Sen. Graham, (SC) and Rep. Chapis, (UT) introduced the *Restoration of American Wire Act* to restore Internet gambling that the *Wire Act* prohibits. Sen. Geller said there are rumors of an *Internet Gambling Prohibition and Control Act of 2014*, which would be similar to the *Restoration of American Wire Act*, but would allow a carve out for poker. Sen. Geller said he expects more discussion of this issue in the future.

NCLGS PROPOSED DRAFT POLICY STATEMENT FOR REGULATION OF INTERNET GAMING

Susan Nolan, NCLGS Executive Director reported the proposed draft policy statement for regulation of internet gambling addresses player protections, problem gambling protections, taxation, licensing, enforcement, payment processing, geo-location and player identification, regulatory authority, multi-jurisdictional agreements, game choice and legality.

Mr. Waldman noted comments and discussion will be taken on the Policy Framework until January.

Ms. Nolan said the proposed language was intentionally created with a broad brush because it was advised that framework too specific would deter uniformity.

Michael Ellen, Director of Licensing at the Alderney Gambling Control Commission, noted he has been a Commissioner for ten years and the Commission has been regulating internet gaming for over 12 years. He said common standards are critical to the success of regulation and good regulation should encourage commercial success. He said good regulation also decreases the market for illegal gambling. He noted that successful operations have player acquisition and retention. He noted that a good

regulatory model has the best software, the least compliance problems, and is able to provide the best return to players. He said a well-regulated environment with common standards enables big operators to prosper across jurisdictions.

Mr. Ellen noted the regulatory model of Alderney and the NCLGS draft policy framework have many commonalities, but the Alderney model preserves the player's right to the funds he has deposited. He said regulations and operational requirements allow players access to their funds at all times. He said this relates to risk of player deposits and that proper protections are extremely expensive to apply.

Rep. Jim Waldman asked Mr. Ellen if there was anything additional he would incorporate into the framework and why? Mr. Ellen said Alderney regulatory responsibilities have nothing to do with taxation. He said he envisions conflict between regulation of internet gambling and application of tax law. He said in his jurisdiction the job of the regulator is to protect players and exclude crime, and protecting payers is opposite of maximizing taxes.

Rep. Waldman asked Mr. Ellen to elaborate on Alderney player protections. Mr. Ellen said that in Alderney game fairness is very important. He said games should be conducted honestly, fairly, and under good governance. He said a lot of money is invested in test labs to ensure the fairness of Internet games.

Bruno Roy of GTECH said that GTECH shares NCLGS view that an effective regulatory and licensing system is necessary for states that want to participate in online gaming. He said state rights should extend to all aspects of Internet gaming. He said states should decide what types and forms of Internet gaming is allowed within their borders. He said states should have the right to adopt the regulatory model that best fits their needs and should be allowed to enter into multi-state Internet gaming agreements in compliance with state laws. Mr. Roy said states should also determine their own requirements in regards to problem gambling.

Kevin Mullalley, Vice President of Government Relations and counsel for GLI, said he reviewed the framework in context of how Internet gaming is regulated worldwide and suggested technical standards be included in the framework. He suggested that technical standards will make the adaptation of an efficient system between states easier and will also facilitate interstate cooperative agreements. He said GLI suggests adopting GLI19, Interactive Gaming System Standards, as a starting point. He noted the website blocking provisions for bad actors has proven to be very difficult.

Sen. Steve Geller suggested language should be that NCLGS does not promote or oppose internet gaming but is primarily concerned with the proper regulation of the industry. He also suggested including a checklist of things to consider that would give each state flexibility.

Marco Valerio, an online poker journalist, said his concern with the framework is the compatibility of state regulations. He said that while individual state regulation is important, the foresight to see that regulations will have to be interstate is necessary.

ADJOURNMENT

There being no further business, the meeting adjourned at 5:30 p.m.