

NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES
COMMITTEE ON CASINOS
ATLANTIC CITY, NEW JERSEY
FRIDAY, JUNE 12, 2015
DRAFT MINUTES

The Committee on Casinos of the National Council of Legislators from Gaming States (NCLGS) met at The Water Club at Borgata in Atlantic City, New Jersey on Friday, June 12, at 1:30 p.m.

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

Other legislators present included:

Rep. Kevin Ryan, CT	Rep. Thomas Loertscher, ID
Rep. Stephanie T. Bolden, DE	Rep. Lois Delmore, ND
Sen. Bill Cowsert, GA	Rep. Marvin Abney, RI
Rep. Matt Dollar, GA	Del. Eric Nelson Jr., WV
Rep. Matt Ramsey, GA	

Others present were:

Susan Nolan, Nolan Associates, NCLGS Executive Director
Candace Thorson, Nolan Associates

MINUTES

The Committee accepted the minutes of its last meeting on January 9, 2015, in Las Vegas, Nevada.

EFFORTS TO REPOSITION ATLANTIC CITY AS A DESTINATION RESORT

Matthew Levinson, Chairman & CEO, New Jersey Casino Control Commission, noted that Atlantic City was a popular resort in the 1930s, as it was just a short train ride from Philadelphia, Pennsylvania, or express train from New York City. He said at this time, when everyone traveled by train, Atlantic City was a “must see” destination. He said, however, that the world changed with the personal automobile, the interstate highway system, and affordable air travel.

Mr. Levinson reported that in 1976, Atlantic City turned to casino gaming to get its “uniqueness” back, and the city was successful. He said the casinos were built along the boardwalk and in the marina district, resulting in millions of visitors flocking to Atlantic City. He noted that the revenue in Atlantic City grew every year from 1976 until 2007.

Mr. Levinson said the economy went into a deep recession in 2007, at the same time that Pennsylvania licensed a string of casinos just across New Jersey’s border. He said that in a short time, most New Jersey residents were closer to an out-of-state casino than they were to Atlantic City. He noted that New Jersey’s casinos were badly hurt, with the closings and lay-offs affecting everyone in the state.

Mr. Levinson noted that New Jersey is currently working to differentiate itself from other surrounding states that offer casino gambling by highlighting all its non-gaming attractions and amenities in Atlantic City. He reported that the casinos are working in conjunction with the

Casino Reinvestment Development Authority (CRDA), which directs the investment of casino revenue into redevelopment projects throughout Atlantic City.

Mr. Levinson noted that many of the properties around the city are taking steps to enhance the non-gaming experience and to attract more non-gaming business to their facilities. He said the properties are renovating rooms, upgrading restaurants and nightclubs, building conference centers, and providing live entertainment. He said that there are also some major attractions outside the casinos that attract many visitors, such as Bass Pro Shops. He noted that the Steel Pier on the Atlantic City Boardwalk is looking to add a 200-foot amusement gondola wheel, which would be open year-round.

In response to a question by Rep. Keeley about working closely with the Tourism Bureau, Mr. Levinson said that he sits on the board of the Casino Reinvestment Development Authority and therefore works hand-in-hand with the redevelopment arm.

SELF-REGULATION INITIATIVES AMONG ONLINE GAMING OPERATORS

Jeff Ifrah of Ifrah Law reported that last November NCLGS introduced a draft framework for self-regulation and regulation initiatives for Internet gaming. He said that many points in that draft policy have already been incorporated, to a certain extent, by New Jersey, Delaware, and Nevada in their regulatory framework.

Mr. Ifrah said the draft policy covers the core concerns of any regulatory policy of Internet gaming, specifically the following:

- instilling public trust and confidence in the industry
- addressing underage and problem gaming
- fairness, safety, and security of the game
- payment processing
- enforcement for violations

Mr. Ifrah said there is always a debate among businesses and legislators about how much regulation is necessary. He said in the online gaming space there are certain industries that are small businesses, which are start-ups, and they are trying to compete with the “big players” in the market. He noted that the more regulation that is placed on the industry, the less likely the smaller businesses are to come to market.

Mr. Ifrah reported that the issues that appear to be “front and center” in the debate on regulation are:

- enforcement of criminal behavior
- operator certification
- taxation policy
- consumer education
- redress for customer grievances
- data privacy
- industry education
- affiliate management

Mr. Ifrah stated that there is a push in self-regulation to make sure that marketing is fair and accurate. He said a group called the Society for iGaming Marketing in America (SiGMA) started

the “SiGMA Seal.” He said that if a company receives this seal as an affiliate, it means that their advertising is considered to be fair and accurate by this group’s standards.

In response to a question by Rep. Keeley about SiGMA structure, Mr. Ifrah said that SiGMA has an oversight board and an advisory board. He said SiGMA has guiding principles that any affiliate who is advertising must meet. He also said that the organization is dedicated to showing that its affiliates do not engage in off-shore advertising and have never promoted off-shore sites.

In response to a question by Rep. Bolden regarding if any local casinos are looking at a similar example and coming together to do their affiliate regulation, Mr. Ifrah said that the New Jersey Division of Gaming Enforcement recently sent out a letter to affiliates, especially off-shore affiliates, warning that if they don’t stop targeting New Jersey consumers with ads for off-shore sites, the state will take action. He said the hope is that with enforcement they can drive the off-shore markets to other states, which will give a chance for some real affiliate marketers to develop.

SPORTS WAGERING LITIGATION

Stephen Schrier of Blank Rome LLP said that two laws prevent sports betting in the United States, except in the states of Nevada and Delaware—The Professional and Amateur Sports Protection Act (PASPA) and The Wire Act.

Mr. Schrier said that New Jersey attempted to bring sports betting to its state by challenging those two federal laws. He reported that New Jersey voters approved a ballot referendum in 2011 authorizing sports betting. He said the legislature passed the law and Gov. Christie signed it, all while knowing PASPA prohibited it. He said the law limited sports betting to licensed casinos and racetracks that could operate “sports wagering lounges” if they obtained licenses from regulators. He noted that there were certain restrictions, including New Jersey college teams and teams playing in New Jersey.

Mr. Schrier reported that shortly after passing the law to legalize sports betting in New Jersey, the National Sports Leagues brought action against the New Jersey Governor and state officials in Federal Court, seeking an injunction based on violation of PASPA. He said that the Department of Justice also joined in, which resulted in a significant legal battle. He said the State of New Jersey lost at trial court and an injunction was issued. He noted that New Jersey then appealed to the Third Circuit Court of Appeals and lost there as well.

Mr. Schrier said that after the decision was made by the Supreme Court, New Jersey’s legislature made an effort to exploit the language in this legal action. He noted that New Jersey repealed, in a very limited way, the criminal and civil laws that prohibit sports betting, but only if the betting takes place at a casino or racetrack. He said New Jersey’s legislature has decided, if successful, it will have sports betting that will be unregulated, but that takes place only at regulated locations (casinos and racetracks).

Mr. Schrier reported that once again, the National Sports Leagues brought action against New Jersey’s Governor and state officials. He said that the State of New Jersey lost again at trial court level, with the judge determining that repealing the criminal and civil laws prohibiting sports betting at only certain locations was not acceptable and the laws would have to be

repealed to allow sports betting anywhere in the state. He said that the case has again been appealed to the Third Circuit Court of Appeals, with no outcome as of yet.

Mr. Schrier said that the tide of public awareness for sports betting seems to be growing in favor of it. He reported that Delaware's Sports Lottery is growing, with the number of locations increasing. He said that some of the professional leagues have softened their stance, including the NBA and MLB. He said national acceptance of sports betting is growing, which is influenced by fantasy sports information.

Mr. Schrier reported that Nevada passed a law allowing companies/entities to place sports bets.

In response to a question by Rep. Ramsey about the rationale for maintaining exclusivity for four states, Mr. Schrier said there is a fairness issue, but the problem is that Congress enacted PASPA. He said as long as PASPA is in place and continues to be supported, that is the federal law. He said there is not a huge move to repeal PASPA all together, but as awareness grows, it is something that may be considered.

In response to a question by Rep. Keeley about when a decision is expected in the New Jersey case, Mr. Schrier said that he expects a decision within the next month. Rep. Keeley asked if it is a good thing or a bad thing for New Jersey that the court is taking longer than usual in the case. Mr. Schrier said he wouldn't put too much weight on that in this situation. He said most legal analysts see the odds as 50/50.

In response to a question from Rep. Dollar about what Nevada has done recently to expand its sports betting, Mr. Schrier said that two laws were recently signed by the Governor of Nevada. He said one law was that an entity/fund can serve as a sports bettor, which expands revenue as larger organizations are able to bet. He said that Nevada also permitted its sports betting operators to outsource their software and operations beyond state lines, as long as it is lawful, which was previously prohibited by state law.

STATE FANTASY SPORTS INITIATIVES

Stephen Schrier of Blank Rome LLP reported that when the 2006 bill known as UIGEA (Unlawful Internet Gambling Enforcement Act) passed, there was a carve-out for fantasy sports. Mr. Schrier noted that there are five states where fantasy sports are illegal, including Arizona, Iowa, Louisiana, Montana, and Washington. He said the remaining states all "wrestle" with the question of fantasy sports being a game of skill or a game of chance.

Mr. Schrier reported that the two largest daily fantasy sports companies, FanDuel and DraftKings, had revenues of around \$57 million and \$30 million respectively last year. He noted that both companies each spent over \$100 million on marketing. He said that Disney and ESPN recently purchased a \$250 million investment in DraftKings. He also said that FanDuel was invested in by NBC Sports and early financing was provided by Comcast. He said the major networks are heavily involved in fantasy sports and all the sports leagues have entered into agreements for marketing.

Mr. Schrier said that the Fantasy Sports Trade Association (FSTA) has made the following points as to why fantasy sports is not gambling:

- It's a game of skill.
- The federal government does not define fantasy sports as gambling.
- Gambling-sensitive organizations support fantasy sports.
- The behavior of fantasy sports players differs greatly from other sports bettors.
- No fantasy sports company has ever been the subject of prosecution for gambling.

Mr. Schrier said the primary concerns to think about if fantasy sports is allowed in your state are age verification, consumer fraud laws, payment methods, anti-money laundering, problem gamblers, and state taxes.

In response to a question from Elizabeth McCall, Connecticut Council on Problem Gambling, regarding the carve-out in UIGEA being prior to the daily fantasy sports games, Mr. Schrier said that UIGEA was designed to address more of a fun game where people could pay an entrance fee, have a whole season to find out if they were smart in choosing their draft picks, and then have the possibility (based on talent) of winning a prize when the season was over. He said that even though there has not been any prosecution or challenge to the daily games, they are treading close to the line in terms of whether they are gambling or not.

INTERNET SWEEPSTAKES CAFÉ ENFORCEMENT ISSUES

Michelle Cohen of Ifrah Law said that the Internet sweepstakes cafés advertise and sell a product (i.e. Internet time, long-distance telephone minutes, etc.). She said the customer receives a bonus of "entries" in the Internet sweepstakes with purchase of product and can also purchase more entries. She said with those entries, the customer can participate in Internet-based games at the cafés specially-programmed personal computers. She also said that based on a random allocation of winning and losing entries, the customer may or may not win cash prizes through those games.

Ms. Cohen noted that Internet sweepstakes cafés are of concern to states and law enforcement because they:

- attempt to avoid state sweepstakes laws, anti-gambling laws, and gambling licensing restrictions
- are estimated to earn more than \$10 billion a year with games that closely mimic the experience of traditional slot and video poker machines
- earn unregulated profits and pay no state/local gaming taxes
- siphon revenues from state-authorized businesses
- do not educate customers about responsible gaming or contribute funds to combat problem gambling

Ms. Cohen also said that Internet sweepstakes cafés lack regulation of the integrity of the owners and operators, the fairness of the games, the exclusion of underage customers, and their locations.

Ms. Cohen reported that law enforcement efforts have found Internet sweepstakes cafés operating across the country, with the largest number of cafés being in Florida, Ohio, and North Carolina.

Ms. Cohen said that several states have outright banned Internet sweepstakes cafés, including California, North Carolina, Ohio, Florida, Massachusetts, New York, and Mississippi. She said that other states have issued opinions under existing law.

Ms. Cohen said that current and developing issues on Internet sweepstakes cafés abound. She said that there has been a lot of time, effort, and money spent on legislating and enforcing against the cafés, but they still exist. She said there are many valid concerns about regulating the Internet sweepstakes cafés, as they are not taxed and do not have the protections that a regulated gaming establishment would have.

ADJOURNMENT

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