

NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES
COMMITTEE ON CASINOS
SANTA FE, NEW MEXICO
JUNE 4, 2004
DRAFT MINUTES

The Committee on Casinos of the National Council of Legislators from Gaming States (NCLGS) met at the Santa Fe Hilton, in Santa Fe, New Mexico, on June 4, 2004, at 1:30 p.m.

Senator Steve Geller of Florida, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Kevin Ryan, CT

Other legislators present were:

Rep. David Hess, NH
Sen. Rod Adair, NM
Sen. Joe Carraro, NM
Sen. Dianna Duran, NM
Rep. Mary Helen Garcia, NM
Rep. Manny Herrera, NM
Rep. Pauline Ponce, NM
Rep. Henry Saavedra, NM
Rep. Edward Sandoval, NM
Sen. H. Diane Snyder, NM
Rep. Jim Trujillo, NM
Rep. Luciano Varela, NM
Sen. Sue Wilson Beffort, NM
Rep. Tom Corrigan, PA
Sen. J.P. Duniphan, SD
Rep. Thomas Van Norman, SD

Others present were:

Bob Mackin, Mackin & Company, NCLGS Executive Director
Susan Nolan, Mackin & Company, NCLGS Deputy Executive Director
Ann Henstrand, MultiState Associates, Inc.

MINUTES

The Committee voted unanimously to accept, as submitted, the minutes of its January 9, 2004, meeting in Las Vegas, Nevada.

STATE/FEDERAL CASINO LEGISLATION AND REGULATION

Mr. Dean Hestermann of Harrah's Inc. made a report to the group on recent legislation affecting the casino industry.

Mr. Hestermann said about one of every four Americans gambled in a casino last year. He said they made over 300 million visits to casinos and that there is widespread approval in survey data of casino visits as entertainment for oneself or others.

Mr. Hestermann said that there are 400 casinos in 11 states at present. He said that that amounts to \$27 billion in revenue, and that with Indian gaming, which would add another \$14 or \$15 billion, the total revenue picture is over \$40 billion. He said that tax revenues to state are significant and rising. Mr. Hestermann noted that a booklet from the AGA was available in the back of the room, outlining many of the metrics on tax revenues, employment, and other economic data from the casino industry.

Senator Geller noted that at a prior meeting, a speaker, Mr. Eugene Christiansen, had said “. . . If you have a 10 percent tax rate, you get the Beluga; if you have a 20 percent tax rate you get Hyatts and Hiltons, and if you have a 70 percent tax rate, you get VLTs at convenience stores” Senator Geller asked if Mr. Hestermann agreed with that paraphrased statement.

Mr. Hestermann said yes, except that more likely at a 70 percent tax rate, you would get nothing at all, since there just wasn't any capital available for development at those high rates.

Mr. Hestermann went on to say that although most gaming expansion efforts fail, it's important to point out about the legalization dynamic that it is always easier to kill a bill than pass it. He said that particularly with gaming, it is really hard to pass expansion bills. He said that some efforts fail because proponents aren't able to come up with the correct formula for casinos in a certain locale, the right mix of tax rates, how they are regulated, their location and other factors, rather than the failure simply being an indictment of gambling per se. He said that since casinos in some form are legal in 30 of the 50 states, legislators should be aware that companies with existing investments in operations may be active participants in trying to scuttle expansion in border states as a competitive move.

Mr. Hestermann then reviewed the significant state legislative and regulatory activities that had occurred in various states. He said that ballot initiatives in California, would require tribes to pay an 8.5% tax rate, which is modeled after the California corporate tax rate. He said another initiative would require tribes to contribute 25 percent of all revenues, or, in the event that they did not, a provision would kick in allowing card rooms to install slot machines. Mr. Hestermann described a Nebraska initiative in some detail, as well as one in Kansas, with concomitant pressures concerning school funding. He said Oklahoma would be voting on Class 2 machines at racetracks and a regulatory scheme for Class 2 tribal casinos, as well as a traditional lottery matter. He said Texas

has had lots of gaming expansion proposals, including a rollout of VLTs to racetracks. Mr. Hestermann said that the Texas state comptroller has estimated that the VLTs measure could create \$1.3 to 1.5 billion in revenues. He said gaming proposals in Texas are varied and it is hard to say what measure will succeed, if any.

Mr. Hestermann spoke of an Iowa measure before the legislature to lift a five-year moratorium on expansions into riverboat casinos by the state regulatory authorities. He said Missouri has a petition that has qualified that it would allow a casino in Rockaway Beach, near Branson, which is not making city fathers in family-friendly Branson happy. He said the Missouri Gaming Commission has strongly recommended, however, that unlimited expansion would be unmeasured and could cannibalize existing revenue sources.

Mr. Hestermann reported on a messy situation in Illinois, with organized crime and allegations of corruption in the licensing of a casino in Rosemont. He said the tie-up in courts was putting additional pressure on locating expansions in other areas.

Mr. Hestermann reported that Michigan has two different racino bills in the House and Senate, with important differences in the limits and regulations under which the racino expansion would occur, and on revenue distribution with regard to the balance between purses and the General Fund.

Mr. Hestermann said that Indiana was fairly quiet, except for a tax on hotel rooms, which was adversely impacting the state's meeting industry and it was expected to be taken up next year.

Mr. Hestermann said Pennsylvania was quite active. He said there was a conflict between some interests, with a State Senator who wanted to add a provision to set aside some licenses for certain tribes, although that effort was recently withdrawn. Mr. Hestermann described the current status of the various proposals under consideration there.

Mr. Hestermann said that in Maryland, gaming expansion was a major part of Governor Ehrlich's campaign platform, but significant confusion was still in play as to what position influential leaders in the legislature will take with regard to the various proposals under discussion.

Mr. Hestermann said that Florida was taking up a statewide vote that would set up the mechanism for local votes in Southern Florida counties for gaming expansions.

Mr. Hestermann said that in New Jersey, Atlantic City casinos agreed to provide monies – about \$90 million over four years – toward subsidies of statewide housing, and toward support of the thoroughbred purses.

Mr. Hestermann said that Rhode Island has been in the middle of a very active public debate concerning its existing facilities, which had not been competing well with

competitors in Connecticut, i.e., Foxwoods and Mohegan Sun. He said Harrah's had partnered with an Indian tribe and proposed a casino as a destination resort with a lower tax rate.

Mr. Hestermann said that Maine has approved a start-up in two locations, but the effort has been tangled up in rulemaking with increased real tax rates that may drive off investor interest.

Senator Geller asked Mr. Hestermann regarding the statement he'd made about the California and Texas efforts, where there is an effort to raise revenue from both Indian tribes and pari-mutuels. Senator Geller said he was under the impression that tribes could only be taxed if there was exclusivity. He asked, if this is the case, what manner could the tribes be construed as having exclusivity?

Mr. Hestermann responded that, of course, ultimately this would be a determination made by the Bureau of Indian Affairs. He said, in theory, the argument would be that the exclusivity arises because the machines at the racetracks have VLTs while the tribes can have slot machines.

Senator Geller asked Mr. Hestermann to enumerate the differences between the competing bills in the House and the Senate in Michigan, which Mr. Hestermann did.

Senator Geller went on to comment that if the measure passed in Florida, it was the feeling that the pari-mutuel tracks, even some that were not currently operating although they were still licensed, would use their clout to kill the enabling bill, or more likely, make sure the expansion was done with a revenue-sharing provision with the tracks.

CLASSIFICATION OF CLASS TWO AND CLASS THREE GAMING

Senator Geller asked if either Mr. Hestermann or Mr. Mark Van Norman, of the National Indian Gaming Association (NIGA), had any comments on the increased blurring of the line between these machines with assistive technology. Mr. Hestermann observed that there is certainly excitement among the tribes and in some other areas where a class two machine can be used, which does not require the approval of a compact. He noted that there is some legislation in the U.S. Senate that would attempt to codify the distinction, but he believed that the applicability of the Johnson Act to some of these machines remains unresolved. Mr. Van Norman added that NIGA was aware of some statements regarding the convergence between the classes, but he did not feel that that's been the experience in the industry, because the public prefers to play the class three machines. He said that federal courts have recently issued five decisions in the past five years on this issue, and the Supreme Court denied review in two of those cases. He said, therefore, that there may be some more stability in this area of the law. Mr. Van Norman said, moreover, that the National Indian Gaming Commission (NIGC) was undertaking consultation to develop technical standards to create a brighter line between the types.

Representative Pettigrew of Oklahoma commented that there was a bill in Oklahoma which addressed this issue. He said that there are 39 tribes in Oklahoma, and all have class two gaming. He said that if the bill passed, the issue would go to an initiative. However, he said that he would agree with Mr. Van Norman that the practical realities of the vendor's machine availability and other factors meant that realistically class two machines were not worth the investment when class three machines are relatively more profitable to run. A general discussion ensued on the differences between the two classes of machines.

ADJOURNMENT

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