

NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES  
STATE-FEDERAL RELATIONS COMMITTEE  
SANTA FE, NEW MEXICO  
JUNE 4, 2004  
DRAFT MINUTES

The State-Federal Relations Committee 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 8:30 a.m.

Representative Bill Oberle of Delaware, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. James Buskey, AL  
Rep. Kevin Ryan, CT  
Rep. Vincent Lofink, DE  
Sen. Steve Geller, FL  
Sen. Lana Oleen, KS

Other legislators present were:

Rep. Charlie Dean, FL  
Rep. Anna Crook, NM  
Sen. Carlos Cisneros, NM  
Rep. Mary Helen Garcia, NM  
Sen. John Arthur Smith, NM  
Sen. H. Diane Snyder, NM  
Sen. Sue Wilson Beffort, NM  
Rep. Tim Solobay, PA  
Sen. J.P. Duniphan, SD  
Rep. Joe Pickett, TX

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.

## FEDERAL GAMING LEGISLATION

Mr. Jonathan Slade, of MWW Group, Washington DC, and NCLGS Washington DC representative, gave a report on gaming-related legislation on the Hill. He prefaces his report with a brief description of the general environment on the Hill. He noted that pending elections meant that most of the activities on the Hill were in suspense. He said that most major issues were being pushed off until next year.

Mr. Slade said that the last few Congresses have failed to pass an internet gaming bill. He said that state lotteries and Indian tribes had been able to kill all previous bills proposed. Mr. Slade noted that it is very difficult to pass any gaming-related legislation in DC, since there is not the same pressure for passage that is present in the states. He gave a brief description of the various political forces and players that are of import on the Hill for these issues.

Mr. Slade reported that in March, the WTO ruled that the US prohibition against internet gaming interests constituted an unfair trade practice. He said the USTR was appealing the decision, but such appeals don't usually succeed.

Mr. Slade reported that in the House there was yet another strongly-supported effort to pass an internet gaming law. He said that bill passed at 319 to 104. He said this bill had an exemption that would allow the states to regulate internet gaming. He said, however, the Senate Banking Committee had passed a bill that differed somewhat, in that Indian casinos would be allowed to take bets via the internet. He said the Senate Committee bill also exempted some state-sanctioned gaming such as dog and horse racing, with other important differences from the House bill. Mr. Slade said that the Senate bill has been stalled before a floor vote, stalling any progress on the House bill as well.

Mr. Slade reported that the American Gaming Association, representing casino interests, has generally preferred the House bill and has been applying pressure, therefore, to not let the Senate move their bill. He said that there isn't any expectation that the current Congress will move further on this until 2005.

Mr. Slade said that another issue on the Hill concerned the Indian Gaming Act, which originally passed 15 years ago. He said that Senator Nighthorse Campbell of Colorado had introduced two bills to amend the Act, in recognition of changes that have occurred. Mr. Slade said that one bill would expand the ability for tribes to conduct certain gaming activities, such as class 3 gaming, and set aside tribal revenues for the good of tribal members. He said that the bill would also set up certain controls and oversight in recognition of the fact that, coupled with declining state revenues, many states have been trying to negotiate revenue sharing agreements under existing compacts. Mr. Slade said that there are almost 250 compacts in existence today in 28 states.

Mr. Slade reported that in February, the Deputy Assistant Secretary for Indian Affairs announced that they are trying to get clearer guidelines on revenue sharing and a limit on the percentage of revenues that states can demand from tribes. He said that pertinent legislation was blocked in the Senate by Senator Reid of Nevada.

Mr. Slade said that other legislation of interest includes a bill in the House regarding tribal/local community relationship improvements which isn't expected to go anywhere, but would provide for minimum requirements on Indian tribal revenue spending, and set up a Commission to examine the current living standards for Indians.

Mr. Slade reported that due to the frustration of not being able to pass an internet wagering bill, a House bill would set up a Commission to study the issue, and how it affects gambling in the states. He said this bill too has no chance to move.

Mr. Slade said that next year the establishment of a commission to studying the internet gaming issues is much more likely.

The Committee then discussed the prevalence of different gaming-related interests in the lobby before the Hill, and how it differs from those present in the states.

Senator Oleen asked if land and trust issues come into the gaming legislation debates on the Hill. Mr. Slade said that those issues tend to be more prominent between a state's Congressional delegation, the Indian Gaming Commission, and the particular state and local governments.

Mr. Mark Van Norman, Executive Director of the National Indian Gaming Association (NIGA), noted that from NIGA's point of view, the issue of land and trust turns on Section 20 of the Indian Gaming Regulatory Act (IGRA). He said the general rule was that recognized tribes use the lands that they had prior to 1988 for gaming, and if they want to use additional lands, they have to go to the Secretary of the Interior. He said the Secretary then has a consultation process with local governments and neighboring Indian tribes, and gives a determination, and then the tribe has to go to the Governor for concurrence. Mr. Van Norman said that it's a very difficult process for tribes to work through, so only three tribes around the country have been able to do that. He said NIGA doesn't think that recognition is a gaming issue. He said the tribes have been in the pipeline for a long time, and the issue is more one of a slow process from the Secretary of Interior.

Senator Smith from New Mexico asked about federal litigation concerning Indian gaming or related issues. Several participants discussed a few cases, including a Supreme Court case concerning the Seminole tribe before both Alabama and Florida. He said the case is still kind of out there, waiting in the queue. Mr. Van Norman also described some technological improvements involving pull-tab dispensers that the US Justice Department felt moved their classification, but the 8<sup>th</sup> Circuit denied review, saying that they were permissible. He said that there was a similar case in Oklahoma, with a similar fate.

Mr. Van Norman also described some labor issues which were recently before the National Labor Relations Board in California, concerning tribal jurisdictional issues.

Senator Geller asked if the assistive technology issue—concerning card rooms where the entire room is basically pull-tab dispensers—seems to blur the line between the different classes. Mr. Mark Van Norman said that the National Indian Gaming Commission (NIGC) is working on some technical standards to add more clarity in the area.

#### INTERNET GAMING

Senator Geller noted that at the last meeting of this Committee, the Committee had determined that it would become more active in this area, and that several members of the NCLGS leadership wanted the organization to move forward in addressing this important issue. He said that the Committee would appoint a subcommittee at this meeting which would get together by conference call to discuss what NCLGS should do with regard to internet gaming. He said that, historically, the NCLGS position has been in opposition to internet gaming, since each state should be able to determine what they want within their state, which internet gaming seems to overturn. However, there are an increasing number of members how feel that since you can't stop it, you should regulate it. Senator Geller also asked that any interested parties let NCLGS staff know if they wished to become involved in this subcommittee's discussions.

#### AMENDMENT TO NCLGS TRIBAL-STATE COMPACT INFORMATION CHECKLIST

Representative Oberle noted that he had sponsored, on behalf of South Dakota Representative Thomas Van Norman, an amendment to the Compact Checklist, since South Dakota is not a member of NCLGS. He said that details of Representative Van Norman's amendments are available in the January 2004 committee minutes.

Representative Oberle described the evolution of the NCLGS checklist as a product of compromise and cooperation between the different interested parties.

Representative Oberle said that the committee had received a letter from Representative Van Norman commenting on the amendments and proposing certain changes to them. The amendments were read into the record.

NCLGS Deputy Executive Director Susan Nolan read the proposed changes into the record. She said the first had to do with the preamble section, and set forth language that set forth the relationships between states and tribes, and regarding the regulation of Indian gaming. She said the second amendment had to do with the limitations section. Ms. Nolan said the third amendment had to do with the sensitive issues section, under revenue sharing. (The very specific changes which were described are available on the website at <http://www.nclgs.org/8000711.pdf>.)

Representative Van Norman addressed the Committee and acknowledged the amount of work that had gone into the creation of the Checklist. He said that today he felt that reasonable language had been set forth that could make the document a useful

tool for all concerned. He said he felt that the Checklist now could serve as a very useful set of information.

After a careful discussion of the amendments, the Committee voted to introduce the amendments under a waiver of the 30-day rule, and moved that the changes be adopted. Both motions carried unanimously.

#### ADJOURNMENT

There being no further business, the meeting adjourned at 9:30 a.m.

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