

NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES  
STATE-FEDERAL RELATIONS COMMITTEE  
SCOTTSDALE, ARIZONA  
FRIDAY, JANUARY 4, 2008  
MINUTES

The State-Federal Relations Committee of the National Council of Legislators from Gaming States (NCLGS) met at the Hotel Valley Ho in Scottsdale, Arizona, on Friday, January 4, 2008, at 4:00 p.m.

Senator Steven Geller from Florida, Chair of the Committee, presided.

Other members of the Committee present were:

- Rep. James Buskey, AL
- Sen. Jim Battin, CA
- Rep. Kevin Ryan, CT
- Rep. Helene Keeley, DE
- Rep. Joe Gibbons, FL
- Rep. Arlen Siegfried, KS
- Sen. Richard Lerblance, OK

Other legislators present were:

- Rep. H. Mac Gipson, AL
- Rep. Sue Schmitz, AL
- Rep. Pebblin Warren, AL
- Rep. Kevin Jeffries, CA
- Rep. Bill Oberle, DE
- Rep. Pamela Thornburg, DE
- Rep. Jim Waldman, FL
- Rep. Harry Kennedy, MO
- Sen. John Sabini, NY
- Rep. Harold James, PA

Others present were:

- Susan Nolan, Nolan Associates, NCLGS Executive Director
- Nicholas Brozean, Nolan Associates, NCLGS Assistant Legislative Coordinator

#### MINUTES

The Committee voted unanimously to accept, as submitted, the minutes of its June 8, 2007, meeting in Las Vegas, Nevada.

#### FEDERAL INITIATIVES

Jonathan Slade of The Cormac Group reported that approval rates for Congress are at a historic low. He said Democrats are expected to gain more seats in the Senate and in the House, and that a bigger Democratic contingency in Congress will impact gaming policy. He said Republicans have about a 40 to 45 percent chance of winning the presidential election.

Mr. Slade said the U.S. Treasury and the U.S. Federal Reserve Board issued proposed rules and then took comments regarding the Unlawful Internet and Gambling Enforcement Act (UIGEA) regulation. He said the rules would allow banks to impose fines, deny service, and terminate businesses of firms that violate Internet gaming policy. He said, however, penalty guidelines have not been provided.

Mr. Slade said that these rules will impact all financial entities, as the U.S. financial institution is facilitating cross-border transactions in its development of rules in order to require foreign operators' compliance.

Mr. Slade said 16 Senate and House Republicans believe the new regulations are too vague. He said banking groups are in vocal opposition to the regulations. He said Credit Union National President Dan Mica wants the law's implementation postponed and House Judiciary Chairman Conyers wrote the Justice Department to attack its view that the new law makes all forms of Internet gaming illegal.

Mr. Slade said eight Senate and House Republicans who support the law are urging finalization of strict rules and quick implementation.

Mr. Slade said supporters of the proposed rules want stricter and more reasonable screening procedures, separate accounts, and all forms of payments covered, as well as U.S. Government facilitation of information sharing for private sector and federal law enforcement. He said they also would like a governmental list of unlawful gaming operators, establishment of a federal government oversight and investigation, and specific guidance for banks on penalties.

Mr. Slade said the House Judiciary Committee recently held a hearing on UIGEA to resolve controversial issues. He said the Justice Department agreed that gaming itself is not illegal, but that a transaction that processes off-shore Internet betting is.

Mr. Slade said UIGEA made it through Congress relatively unopposed because it was attached to the Safe Port Act. He said some say that the UIGEA does not reduce Internet gambling, but causes illegal betting and further money laundering.

Mr. Slade said a World Trade Organization (WTO) decision confirming U.S. violation of a General Agreement on Trade in Services (GATS) for prohibiting overseas Internet gambling requires the U.S. to compensate countries for losses and permit overseas wagers, or eliminate Internet gaming completely.

Mr. Slade said legislation proposed by Representatives Frank, Wexler, McDermott, or Berkley would amend UIGEA. He said a Democratic party turnover in the upcoming election could prompt the U.S. Administration and Congress to address Internet gaming.

Mr. Slade said the Senate Indian Affairs Committee recently held a hearing on the backlog of land-into-trust applications and that the issue could progress in the 111<sup>th</sup> Congress.

In response to a question from Sen. Geller, Mr. Slade said the current political administration is anti-gaming and is unlikely to address Internet and Indian gaming regulations.

#### INTERNET GAMING AND NCLGS POSITION

Sen. Geller said NCLGS opposes Internet gaming, as each state should have the right to control various forms of gambling within their borders.

Frank Catania, a representative of the Interactive Gaming Council (IGC), said Internet gaming should be regulated, states should be able to regulate and tax internet gaming, and recommended that NCLGS modify its Internet gaming position to include its opposition of federally regulated Internet gambling.

Mr. Catania said it is unlikely that the Department of Justice is going to take action against the legality of Internet gaming and the Wire Act.

The committee proposed holding a panel on the WTO ruling and federal Internet gaming actions at the next meeting and revisiting the NCLGS position.

#### GAMING EXPANSION AND OFF-RESERVATION GAMING

Danielle Her Many Horses, legislative director of the National Indian Gaming Association (NIGA), reported that today the Department of the Interior instituted new guidelines for addressing land-into-trust applications public.

Ms. Her Many Horses said the Indian Gaming Regulatory Act (IGRA) emphasizes that Indian gaming can only be implemented on tribal lands held prior to 1988; but allows exceptions, including contiguous lands, landless and newly recognized tribes, as well as restored tribes, land claim settlements, and a two-part determination.

Ms. Her Many Horses said under the two-part determination, the Secretary of the Department of the Interior (DOI) must consult with state governments and local tribes before issuing land-into-trust approval. She said the DOI uses a checklist for considering land-into-trust applications and requires tribes to comply with DOI standards prior to being able to conduct gaming on reservations.

Ms. Her Many Horses said today a new DOI guideline for commutable distance between a reservation and a proposed gaming facility was added to DOI standards. She said this impacts the likelihood of obtaining approval on a land-into-trust application. She said the further a tribal reservation from a proposed gaming facility, the less likely the application will be approved.

Ms. Her Many Horse said the Secretary of the Interior has sent out 22 letters denying 11 tribal off-reservation gaming applications and subjecting the remaining tribes to requests for more information prior to any approval.

In response to a question from Sen. Battin, Ms. Her Many Horse said new DOI guidelines raise many questions about the definition of commutable distance, which should be addressed in the near future.

## NIGC PUBLISHED REGULATIONS FOR CLASS II & III GAMING

Phil Hogen, chairman of the National Indian Gaming Commission (NIGC), said NIGC Class III gaming is no longer subject to Minimal Internal Control Standards (MICS) after a federal court ruling. He said, however, several tribes have agreed to comply with NIGC standards regarding Class III gaming, while other tribes have amended their tribal gaming ordinances or signed new state gaming compacts to include Class III standards.

Mr. Hogen said NIGC is developing rules to differentiate between Class II and Class III gaming, because gaming machines must be clearly distinct in order for the NIGC to maintain efficient oversight. He said in October 2007 proposed regulations had been released by the NIGC to define Class II and Class III gaming, including a new definition of an electronic facsimile of a game of chance, classification standards, and technical standards.

Mr. Hogen said the NIGC is taking comments on the proposed regulations until January 24, 2008. He said on January 23 the NIGC tribal advisory committee will meet to decide whether or not to again extend the comment period.

Mr. Hogen said tribes are content with NIGC proposed language for technical standards, but do not agree with the other proposed regulations. He said new proposed regulations allow old gaming machines to be used until they stop working and need to be replaced. He said new gaming machines will be subject to NIGC classification standards at a gaming lab after it is developed and before it reaches a gaming floor.

Mr. Hogen said Class II gaming machines require regular player participation and attention to win unlike slots.

In response to a question from Sen. Geller, Mr. Hogen said the Department of Justice has not made a judgment regarding current proposed regulations.

Ms. Her Many Horses said NIGA would like NIGC and tribal governments to negotiate and agree upon Class III gaming standards, but feels tribes have not had sufficient opportunity to dialogue on the proposed regulations' construction. She said NIGA questions what economic and sovereign impacts tribal governments will experience from imposed regulations. She said NIGA would like the January 24 comment period extended to give tribes enough time to respond.

In response to a question from Sen. Battin, Mr. Hogen said IGRA authorizes NIGC to regulate Class II gaming, which allows NIGC to develop distinctions for Class II and Class III gaming in order to guide impacted parties, such as manufacturers.

## PROPOSED AMENDMENTS TO THE NCLGS TRIBAL-STATE INFORMATIONAL CHECKLIST

Sen. Geller said originally NCLGS developed a compact informational checklist rather than a model compact after hearing objections from tribal interested parties. He said a model compact was objected to because compacts vary according to tribal and state statutes.

Sen. Geller said proposed amendments to update the *NCLGS Tribal-State Informational Checklist* were submitted at the 2007 NCLGS Summer Meeting and have since been distributed by the organization.

After reviewing proposed amendments, the committee voted to revise language relating to Class III gaming and MICS and adopt new language relating to problem gambling, environmental impacts, gaming test equipment, and third-party beneficiaries. The committee also voted to review at the 2008 NCLGS Summer Meeting proposed amendments in contention regarding language taken from the Coyote Valley Band of Pomo Indians compact and comity and court ordered obligations.

Sen. Battin for the record objected to any revisions, as well as the concept of the *NCLGS Tribal-State Informational Checklist*.

#### ADJOURNMENT

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

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