

NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES
STATE-FEDERAL RELATIONS COMMITTEE
SCOTTSDALE, ARIZONA
FRIDAY, JANUARY 9, 2009
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 9, 2009, at 2:30 p.m.

Senator Tom Harman from California, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. James Buskey, AL
Rep. H. Mac Gipson, AL
Rep. Kevin Ryan, CT
Rep. Helene Keeley, DE
Rep. Bill Oberle, DE

Other legislators present were:

Sen. John Sparks, OK

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 13, 2008, meeting in Napa, California.

INTERNET GAMING

STATE AND FEDERAL LEGISLATION

Bruce Zagaris, a partner of Berliner, Corcoran & Rowe, said the unclear definition in the Unlawful Internet Gambling Enforcement Act (UIGEA) of 2006 makes the legislation vague and hard to enforce. He said an initiative exists to get the Obama Administration transition team to review the UIGEA regulations issued after the election and before President Obama took his oath of office on November 11, 2008.

Mr. Zagaris said regulation is an alternative to the current policy, such as the intentions of the Wexler, Menendez, McDermott, and Barney Frank Bills. He said sporting leagues would have the option to prohibit Internet gambling on league events and activities.

Mr. Zagaris said a Pricewaterhouse study looking at Internet gaming regulation economics shows a potential for the U.S. to produce between \$8.7 and \$15.6 billion in revenue over ten years depending on the number of states that decide to participate. He said the addition and

regulation of Internet gaming on sporting league events and activities could increase the potential revenue gain to \$42 billion over ten years.

Mr. Zagaris said the American Gaming Association (AGA) is working out a formula to divide possible revenue from Internet gaming regulation between the federal and state governments. He said the AGA does not have a position on Internet gaming regulation.

U.S. POLICY AND INTERNATIONAL RELATIONS

Mr. Zagaris said the WTO Internet gaming dispute began in March 2003 when Antigua and Barbuda brought an action against the U.S. He said a WTO decision in November 2004 and a WTO appellate decision in April 2005 were in favor of Antigua and Barbuda. He said since 2005, the U.S. and Antigua have been trying to reach a resolution, but have been unsuccessful.

Mr. Zagaris said using Article 21 of the WTO, the U.S. withdrew its commitment to make gambling services part of its general agreement on trade and services. He said withdrawing from trans-border gaming services forces the U.S. to negotiate restitution with countries that have loses. He said many countries have lost confidence in the WTO and its commitment to resolve international dilemmas and believe the U.S. systematically undermined the WTO as a consequence of the WTO Internet gaming dispute.

Mr. Zagaris said the Remote Gambling Association brought a complaint to the European Commission for discriminatory prosecution after the U.S. and the E.U. came to a settlement on U.S. gaming commitment withdrawal. He said the U.S. is still prosecuting foreigners, and big public companies, as well as their directors for doing business in the E.U.

Mr. Zagaris said the European Commission did an investigation and met with the U.S. Trade Representative, Department of Justice, and legislative branches to address complaints, but did not reach a resolution. He said the E.U. is now going to file another complaint with the WTO for discriminatory prosecution. He said the WTO is now considering complaints by the U.S. against China and Mexico for similar practices relating to intellectual trade and property rights.

Mr. Zagaris said Anurag Dikshit, co-founder of PartyGaming, pled guilty and agreed to pay U.S. authorities \$300 million on December 16, for illegal Web betting in one of the most high-profile prosecutions so far in the U.S. on Internet gaming. He said PartyGaming is continuing to battle the Department of Justice for a better resolution. He said a number of public companies are negotiating with the Department of Justice on Web betting violations prior to the passage of UIGEA in October 2006.

Mr. Zagaris said the E.U. complaints against the U.S. in the WTO, new federal administration, potential revenue gain from Internet gaming, and technological advances will play a factor in future Internet gaming developments.

TECHNOLOGY TRACKING INTERNET GAMING

Ian Plumley, president & CEO of BlackEdge Technologies, said it is very easy to place many types of bets over the Internet in the U.S. He said the technology exists to regulate I-gaming within a state's borders.

Mr. Plumley said I-gaming drives so much revenue that criminalizing Web betting violators is nearly impossible without anyone controlling Internet access. He said current federal efforts to regulate Internet gaming have been ineffective and are setting a precedent for federal authority over gaming, similar to previous actions in Canada.

Mr. Plumley said I-gaming is an \$18 billion industry, illegal in the U.S., and the ban is almost impossible to enforce. He said the Internet sites and computers that host I-gaming Web sites are kept off-shore beyond the jurisdiction of U.S. law enforcement.

Mr. Plumley said the U.S. is vulnerable to money laundering, and roughly \$12 billion is directly leaking from U.S. GDP every year by not regulating I-gaming. He said estimates figure state regulation of I-gaming could generate \$30 billion depending on policy restrictions.

Mr. Plumley said technology allows states to control and ban Internet access on Web sites allowing I-gaming at state borders. He said states would have the power to mandate I-gaming Web site licensure. He said some I-gaming Web sites participate in geo-blocking or goodwill blocking that ban customers from betting over the Internet in certain locations. He said goodwill blocking depends on I-gaming company discretion.

Mr. Plumley said it is a state's right to regulate I-gaming and protect consumers. He said states have the ability to control I-gaming within their borders and NCLGS should expand upon its Internet gaming position.

In response to a question from Sen. Harman regarding Internet gaming regulation and individual privacy rights, Mr. Plumley said technology allows Web site blocking without tracking an individual's personal history.

Professor I. Nelson Rose said the legality behind technology allowing Internet gaming regulation would depend on the ability to safeguard a consumer's privacy rights.

In response to a question from Professor I. Nelson Rose regarding manipulation of location using different servers, Mr. Plumley said technology is reliant upon the Internet Service Provider (ISP) and IP address mapping.

TRIBAL GAMING

FEDERAL LEGISLATION REGARDING TRIBAL CONSULTATION PRIOR TO RULEMAKING

Norman H. DesRosiers, vice-chairman of the National Indian Gaming Commission (NIGC), said President Clinton issued an executive order while in office regarding consultation processes and standards between federal governmental agencies and tribal governments. He said independent regulatory agencies, such as the NIGC, were made exempt from the executive order on consultation. He said the NIGC did release a formal consultation policy in 2004 similar to the executive order.

Mr. DesRosiers said the NIGC is responsible for promulgating regulations over certain aspects of Indian gaming and consulting with tribes throughout the process. He said the NIGC has been

criticized for not consulting enough or meeting the expectations of tribes in the consultation process.

Mr. DesRosiers said 230 sovereign tribal governments conduct Indian gaming that operate roughly 440 gaming facilities. He said it is a challenge for the NIGC to consult all tribal governments before implementing new Indian gaming regulations. He said the NIGC tries to set a balance by attending regional tribal meetings and setting up individual consultations, as well as sending out letters and seeking written comments.

Mr. DesRosiers said U.S. Rep. Rehall introduced H.R. 5608, Consultation and Coordination with Indian Tribal Governments Act, in March 2008 to setup standards for federal agencies to follow when contemplating regulations and policies that would affect an Indian tribe and require consultation with each of those tribes. He said the NIGC finds some of the language and requirements in the proposed legislation problematic.

Mr. DesRosiers said President Clinton's executive order, H.R. 5608, and the NIGC consultation policy are alike. He said implementing new policies would only reiterate prior requirements for tribal consultation and makes the process more time consuming. He said the NIGC is currently working with tribes and tribal associations to implement a mutually acceptable consultation process that eliminate future tribal consultation issues.

In response to a question from Sen. Steven Geller regarding the willingness of tribal governments to work with the NIGC, Mr. DesRosiers said tribal governments will likely work with the NIGC to reach a mutual consultation process, but also pursue future federal legislation.

Danielle Her Many Horses, legislative director of the National Indian Gaming Association (NIGA), said NIGA and its member tribes are discussing ideas to improve the consultation process with the NIGC. She said the tribal community does not believe the tribal consultation process adequately addresses tribal concerns.

Ms. Her Many Hoses said a concern exists in the U.S. House Natural Resources Committee and the Senate Indian Affairs Committee over the consultation process and how to enact effective legislation that ensures accountability. She said the Committees have sent letters to tribal governments requesting suggestions for legislation that best resolves tribal concerns with the consultation process.

Ms. Her Many Horses said tribal governments and the federal government are sovereigns and should be having discussions on a nation-to-nation basis. She said notices requesting comments are an ineffective means of communication that does not allow sovereigns to discuss actions appropriately. She said the Committees have numerous tribal comments and plan to reintroduce consultation legislation in the 111th Congress. She said the Committees feel there is a need for federal legislation, as an executive order can be overlooked by future administrations.

Ms. Her Many Horses said NIGA appreciates the effort being put forth by the NIGC to develop an effective consultation process. She said communication is necessary for NIGA and the NIGC

to ensure a proper working relationship toward the best possible regulation of the tribal gaming industry, while also respecting tribal sovereignty.

In response to a question from Sen. Harman regarding the ability to adequately consult all tribal governments prior to implementing regulation, Ms. Her Many Horses said there is a need for a consultation process and federal legislation to enable federal agencies to properly and efficiently consult tribal governments on regulatory issues.

J.R. Matthews, vice chairman of the Quapaw Tribe of Oklahoma and treasurer of the NIGA, said tribes are asking for full consultation with all tribes as tribes are paying for the consultation process. He said states' rights are as important to state legislatures as tribal rights to tribal governments.

NIGC ACTIVITY RELATING TO DISTINCTION BETWEEN CLASS II & CLASS III MACHINES
Phil Hogen, chairman of the NIGC, said the Government Performance and Result Act (GPRA) requires the NIGC to plan and report on developments. He said the NIGC setup a five-year plan, as well as annual performance plans and reports to comply with GPRA.

Mr. Hogen said internal controls are necessary to ensure the gaming industry maintains integrity. He said the NIGC was never able to finalize rules to clarify the distinction between Class II and Class III gaming machines. He said as part of the process, NIGC came up with Minimal Internal Control Standards (MICS) for Class II gaming or bingo machines. He said bingo machines are linked to a central computer or server unlike standalone slot machines.

Mr. Hogen said on November 10, 2008, NIGC issued technical standards for Class II games that differed from standalone slot machines. He said the tribal investment in Class II gaming and electronic bingo machines is about \$3 billion.

Mr. Hogen said the NIGC has a system to make sure the random number generator is accurate in electronic bingo machines. He said older Class II gaming machines that meet some of the technical standards will be grandfathered into the system for five years, which is the average lifetime for a gaming machine.

Mr. Hogen said technical standards deal with the equipment manufacturing, operation, and resistance to manipulation. He said the MICS deal with physical and communication security, wagering control, and tracking of random number generators.

Mr. Hogen said Class II facilities have 120 days to send their electronic bingo machines to the laboratory for grandfather labeling and five year certification. He said in five years all Class II machines will need to comply with the new standards. He said standard inconsistencies have been changed and the system should be workable and provide greater security for Class II gaming machines.

Mr. Hogen said the NIGC has not yet come to a resolution over one touch bingo machine legality.

In response to a question from Rep. Gipson, regarding one touch bingo, Mr. Hogen said one touch bingo made quick technological advancements. He said the NIGC is uncertain as to whether or not one touch bingo machines are a form of Class II gaming and require NIGC enforcement, as one touch bingo allows the machine to draw numbers while claiming wins for players. He said Class III gaming requires a gaming compact.

J.R. Matthews said Class III gaming transitions caused blurring between Class II and III machines. He said Ticket-In Ticket-Out (TITO) technology and games are being taken from Class II gaming for downloadable games in the Class III industry. He said old Class II technology allows better and faster Class III gaming machines, which leads to greater profits.

Mr. Matthews said tribes need to make more money to provide services to their tribal governments, communities, and organizations.

In response to a question from Rep. Gipson, regarding the differentiation between Class II and Class III gaming machines, Mr. Matthews said Class II gaming is done through a system involving other players. He said Class III gaming machines are standalone. He said if someone unplugs a series of gaming machines, but allows one game to continue running and that game does not stop, the machine is not Class II.

ADJOURNMENT

There being no further business, the meeting adjourned at 4:00 p.m.

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