

TESTIMONY BEFORE THE  
NATIONAL GAMBLING IMPACT STUDY COMMISSION

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NATIONAL INDIAN GAMING COMMISSION

JULY 30, 1998

TEMPE, ARIZONA

Chairman, Members of the Commission, Tribal Leaders and other Distinguished  
Participants:

I am Penny Coleman, Deputy General Counsel for the National Indian  
Gaming Commission. Thank you for inviting the Gaming Commission to speak  
before you today.

I am here to discuss the current state of affairs with respect to the regulation of  
Indian gaming. Our Chairman, Tadd Johnson, appeared before you in Boston and  
generally described the Commission and the Indian Gaming Regulatory Act (IGRA).  
The Commission has a small staff of about 40 employees operating on a \$5 million  
budget. We have been operational for five years.

As you will recall, the Indian Gaming Regulatory Act (IGRA) established three  
classes of games. Class I games are traditional or social games which are regulated  
solely by Indian tribes. Class II games are high stakes bingo and similar games and  
non-banking card games such as poker. Tribes and the NIGC share the regulatory

role over Class II. Class III casino-type gaming is governed by the tribes, the states pursuant to some tribal-state compacts, and the NIGC. In addition, the United States Attorneys have jurisdiction under federal statutes over Indian gaming.

Although some states have a pervasive role in regulation over Class III facilities, this role varies dramatically from state to state, and under IGRA the states have no role over Class II. As a result, the tribes are generally the primary regulators. Tribal regulatory commissions assure the integrity of the day-to-day operation of the facilities. During the years I have worked in Indian gaming, I have had the opportunity to visit numerous Indian and nonIndian gaming facilities. During those visits, I have discovered that there are many Indian operations which have taken the best of the nonIndian regulatory processes and have adapted them to their facilities. By doing so many tribes have internal controls which are even more stringent than state regulated facilities. For example, the number of surveillance cameras in non-Indian facilities are sometimes limited and the number of cameras actually taping activity on the gaming floor is considerably more limited. On the other hand, I have visited Indian facilities with hundreds of surveillance cameras, all of which were taping gaming activity. It is also common to find state-of-the-art equipment, such as video systems used to identify suspicious persons on the gambling floor, at such Indian facilities.

Although the NIGC's budget is expected, under an amendment to IGRA, to

increase to \$8 million, the NIGC can not assume the primary regulatory responsibility for these facilities. With 285 gaming operations at 188 tribes in 28 states, the NIGC assumes an oversight role with a focus on education and voluntary compliance in addition to taking enforcement actions.

In IGRA there are a few sections describing NIGC authorities which are specific to Class II. The Commission is specifically authorized to monitor Class II gaming, inspect and examine the gaming premises and demand access to and audit Class II records.

These specific authorities are subsumed, however, in general overall authorities in the Act which apply to Class II and Class III gaming. Foremost, among these is the Commission's authority to determine whether a gaming operation is complying with all provisions of IGRA, any NIGC regulation and tribal regulations. With this broad authority comes broad enforcement authorities -- that is, if IGRA, our regulations or tribal regulations are violated, the Commission may issue notices of violation, closure orders and civil fines of \$25,000 per day, per violation.

As you can see by the chart, most of the work we do relates to gaming operations which are either combined Class II and Class III or purely Class III operations.

**REPRESENTATIVE ACTIVITIES BY CLASS OF OPERATION**

	<b>CLASS II ONLY</b>	<b>CLASS III AND COMBINED CLASS II AND III</b>
Gaming Operations	71	204
Ordinances Approved (including amendments)	44	231
Site Visits Made as of 6/98	350	1100
Civil Fines Imposed	9	62
Closure Orders Issued	2	27
Enforcement Actions Taken (1996-98)	12	70
Compliance Settlements	8	32
Contracts Approved	6	22

For both Class II and III, we are responsible for approving tribal ordinances and management contracts, for receiving and reviewing annual audits, for assuring the gaming is conducted in a manner which protects the environment and public health and safety, for assuring that background investigation systems are adequate and that certain contractors are audited; and for requiring that the tribes have the sole proprietary interest in the gaming and that per capita payments to tribal members are made only as permitted by IGRA. Furthermore, for Class III, the NIGC has the authority to determine whether Class III gaming is conducted in conformance with a Tribal-State compact.

To assure compliance with the law, we focus much of our resources on education and technical assistance. We do this by providing large group training and individual visits and by issuing bulletins and warning letters. We are often called to intervene when tribal factions are in disagreement or the tribal regulators need an outside agency to help resolve gaming problems. We are also in the process of establishing minimum internal control regulations with the assistance of an advisory committee of tribal regulators. Interestingly, this advisory committee has been a strong proponent of very detailed, strict internal controls. We hope to issue these regulations as proposed within the next month.

During the last two years, the Enforcement Division has experienced a significant expansion of its activities. During the 1996-97 period, the Division initiated 56 enforcement actions, nearly five times the number of actions taken in the prior two year period. These actions addressed a wide range of regulatory violations including operating without an approved gaming ordinance, failing to submit fees and operating Class III gaming activities without an approved tribal-state compact. We closed a facility for failure to conduct audits and background investigations of key employees. We have two actions pending against contractors for managing without approved management contracts. These actions have resulted in \$1 million and \$8.5 million dollar fines.

In 1997, we began to publish a compliance report of all the gaming tribes

covering eight major requirements of IGRA. The report reflects a continued improvement in the compliance record of the tribes. Compliance percentages improved with regard to the submission of investigative reports and employee applications, the payment of fees, compact approvals, and the submission of annual audits. The percentage of tribes with approved ordinances and with tribal licenses remained near 100%. For your review, I provided a copy of the most recent compliance report.

IGRA, however, not unlike other acts, has its problems. An important concern is the gaps in our regulatory authorities over vendors, suppliers, consultants and, to some extent, Class III management contractors. IGRA provides the NIGC with authority to approve management contracts. Thus, some contractors have attempted to circumvent the law with elaborate schemes to hold themselves out as consultants, lenders or tribal employees. By doing so, they seek to avoid the thorough background investigations needed to assure the integrity of Indian gaming. If these contractors are actually managing and controlling the gaming operation, we can bring an enforcement action for managing without an approved management contract. These cases are difficult to prove and require a tremendous amount of resources.

Furthermore, while the FBI processes fingerprints for key employees, tribes are often unable to conduct a thorough investigation on vendors, suppliers and consultants. The FBI will not process the fingerprints for these contractors. Unless

states have agreed to conduct background investigations on such contractors, tribes cannot always access the information available to make an informed decision on the suitability of such contractors.

This problem can also arise with management contractors for solely Class III operations. IGRA provides for NIGC background investigations of Class II management contractors but assumes that the tribes and states will have provided for such for Class III managers. If the Tribal-State compact fails to include these background investigations, the result may be that casino operators are investigated less thoroughly than bingo hall operators.

Another problem has arisen with overlapping responsibilities for the classification of games. Although the NIGC assumes primary oversight for IGRA, the Department of Justice and the states also have responsibilities which require them to determine whether a game is Class II or III. Inconsistent classification decisions can necessarily cause problems for the tribes.

As you can see, the NIGC is faced with a number of challenges. In the four years I have served the NIGC, I have seen it rise to those challenges again and again. We welcome and encourage your support for our efforts.

Thank you for the opportunity to appear before you.