

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Remarks by Gary A. Husk

Good morning. My name is Gary Husk and I am the Director of the Arizona Department of Gaming, the state agency responsible for the regulation of Class III gaming on Arizona's Indian reservations. I have served in my current capacity for approximately three and one-half years and previously served as a county, federal and state prosecutor for twelve years. On behalf of the State of Arizona and Governor Jane Dee Hull, I welcome you and your staff to Arizona and I thank you for the opportunity to deliver some brief remarks on the subject of *Regulation and Enforcement of Indian Gaming*.

Background

Any thorough discussion of the current status of Indian gaming in Arizona requires at least cursory examination of the historical perspective of this contentious issue. As you may be aware, Arizona law permits limited forms of gaming off-reservation. Those forms include bingo, horse racing, dog racing, pari-mutual wagering and the Arizona lottery.

State law prohibits the use of gaming devices and the play of any type of card games that provide a direct or indirect benefit to the facility hosting the activity. The passage of Indian Gaming Regulatory Act in 1988, however, had a profound impact on the gambling environment within this state.

Although the State of Arizona initially resisted entering into compacts for Class III gaming on Indian lands pursuant to IGRA, a decision by a federal mediator and the intercession of Secretary of the Interior Bruce Babbitt had the effect of forcing the State to enter into gaming compacts with sixteen separate Indian tribes. Generally, these gaming compacts attempt to set forth the rights and obligations of the tribes and the State in the area of Indian gaming. Specifically, the compacts attempt to establish a regulatory structure for Indian gaming and define the scope of gaming activities that are permissible on reservations located within the State of Arizona. Each of Arizona's gaming compacts were negotiated for a ten year term and the first series of those compacts will expire in the year 2002.

Regulatory Framework

The first step in Arizona's regulation of Indian gaming was taken by the Arizona Legislature through the creation of the Arizona State Gaming Agency.

The agency was funded through an annual gaming device assessment of \$500.00 per device, paid by the gaming tribes, that was earmarked to the state-tribal compact fund. From this fund the Arizona Legislature appropriated funds to the State Gaming Agency to perform its regulatory responsibilities. All unappropriated dollars contained in the state-tribal compact fund are refunded to the gaming tribes on an annual basis. Thus, all costs relating to the regulation of Indian gaming are borne by the gaming tribes and not the Arizona taxpayers.

Although the State Gaming Agency was initially contained within the Arizona Department of Racing, the Legislature in 1995 recognized the need for a more specialized and independent regulatory body and established the Arizona Department of Gaming.

Since its inception the role of the Department has evolved from merely an entity that assisted the tribes in opening their casinos to one that is actively involved in the daily monitoring of the gaming operations. Today, the Arizona Department of Gaming has sixty full-time employees and an annual budget of approximately 4.5 million dollars.

Regulation and Enforcement Responsibilities

As a consequence of IGRA and the various state-tribal compacts, the regulation of Indian gaming is complicated by the involvement of three distinct sovereigns. The federal government, in the form of the National Indian Gaming Commission, the tribe, in the form of the tribal gaming office, and the state, through the Department of Gaming each play a role in the regulation of gambling on Indian lands. In addition, the ability to enforce the criminal laws the exclusive jurisdiction of federal law enforcement authorities.

While this sharing of responsibility may have been perceived by Congress to be politically expedient, it has created a regulatory and enforcement nightmare for those of us assigned the task monitoring this multi-million dollar cash industry. For despite the fact that three separate regulatory bodies possess some limited authority over Indian gaming, no single body has complete authority for the regulation and enforcement of Indian gaming. This has created endless conflict, needless confusion and a regulatory atmosphere is entirely dependent upon a consensus among political entities with vary diverse interests.

Consequently, the regulatory scheme of Indian gaming is considerably less effective than that imposed upon non-Indian gaming enterprises in the vast majority of jurisdictions.

At first blush, Arizona's regulatory scheme may appear to be adequate and there have certainly been occasions where the State, the tribes and the NIGC have coordinated their efforts to provide for effective regulation of the gaming industry.

Regrettably, however, that has not always been the case. Since tribal regulators are usually employed by a gaming commission that reports directly to the tribal council, tribal regulators lack the autonomy of their off-reservation counterparts. Frequently, the tribal gaming offices are required to serve as advocates for the very casino for which they are responsible for regulating. There have also been instances where tribal regulators have attempted to engage in effective regulation of the casino only to find their actions thwarted by tribal politics. In at least one instance, tribal regulators who cooperated with the Department of Gaming and took decisive action against casino personnel found themselves unemployed. Thus, the reluctance of some tribal regulators to offend tribal leaders through enforcement actions is completely understandable.

On the issue of federal regulation, the State of Arizona has been extremely disappointed by recent actions by the NIGC that demonstrate a greater preference towards promoting Indian gaming rather than regulating Indian gaming.

Nowhere was this more evident than during an incident earlier this year involving a formal legal opinion issued by the Arizona Attorney General concerning the play of poker at Indian casinos. Basically this opinion concluded that the manner by which poker was being played at Arizona's Indian casinos violated state law and, therefore, constituted Class III gaming. In the absence of a gaming compact with the State that specifically authorized poker to be played in this manner, Indian tribes were not permitted to engage in this kind of activity.

After the Arizona Attorney General declined to amend and/or withdraw this opinion, several tribes persuaded the NIGC to express their opinion on this issue. NIGC elected to insert themselves in this debate despite the fact that, prior to ever soliciting an Attorney General Opinion on this matter, the Department of Gaming had made three separate requests for guidance from the NIGC on this very issue and those requests had apparently been ignored. Nonetheless, NIGC wasted little time in addressing this issue on behalf of the tribes.

With absolutely no consultation with the Department of Gaming or the Arizona Attorney General, an attorney for the NIGC did not hesitate to issue a letter to Arizona's Indian tribes that concluded that Attorney General's opinion was incorrect. Needless to say, the zeal with which the NIGC to rush to the aid of gaming tribes and interpret state law has not been well-received by Arizona officials and confirms the suspicions of many states concerning the objectivity of this regulatory body.

Regardless of the continuing debate on poker, the lack of true independent regulatory presence in Arizona's card rooms is a cause of great concern. NIGC clearly does not have the necessary resources to effectively regulate these card rooms and any interpretation that poker constitutes Class II gaming poses an insurmountable obstacle for state regulation. This significant void in the regulation of card games is a major factor that leads one to the inescapable conclusion that the regulation of card games at Arizona's Indian casinos is woefully inadequate.

Class III Gaming Regulation

Shifting the focus of my remarks to the Class III gaming activities at Arizona's casinos, our compacts authorize gaming devices, keno, lottery, off-track pari-mutuel wagering, pari-mutuel wagering on horse racing and pari-mutuel wagering on dog racing. The most popular and lucrative forms of Class III gaming are the slot machines. The regulatory responsibility for Class III gaming lies exclusively with the Department of Gaming and the individual Tribal Gaming Offices. With some exceptions, these entities have been successful in implementing policies and procedures that are intended to reduce the likelihood of criminal activity and corruption within Indian casinos.

Pursuant to the terms of the compacts, the Arizona Department of Gaming is authorized to conduct background investigations of companies seeking to provide gaming services to Indian casinos and individuals seeking to obtain employment with an Indian casino.

Certification of a company is required if that company exceeds ten thousand dollars (\$10,000.00) worth of services in any given month. The State is also required to certify all non-tribal member gaming employees and is limited to making employment recommendations to the Tribal Gaming Offices on all tribal member gaming employees.

Other functions of the Department include the regular and random inspection of the gaming devices, regular inspections of the gaming facilities and a general monitoring of the casino operations to ensure compliance with the provisions of the compacts. The most common methods for accomplishing these objectives are (1) the assignment of investigators to individual casinos who are expected to make weekly visits the facility, (2) the conducting of unannounced inspections of gaming devices and (3) the conducting of bi-annual compact compliance reviews of gaming facility through the use of a team of investigators, auditors and slot-machine technicians.

In addition, the Tribal Gaming Offices generally perform regulatory activities that mirror those of the Department of Gaming and these separate entities have worked in conjunction with one another

There is no question that Arizona the premier regulator of Indian gaming. The Department of Gaming has done a remarkable job given the significant constraints created by vague compacts and vague federal law. Nonetheless, Arizona's regulation of Indian is a far cry from the type of stringent regulation of private commercial gaming that has been adopted by states such in other jurisdictions.

Arizona's authority is limited to that established in the either IGRA or the compacts. Thus, Arizona lacks the authority to impose civil fines on gaming operators, it lacks the authority to audit gaming operations and it lacks the authority to track gaming revenues.

Although the Department of Gaming can and does cite Indian tribes for compact violations and violations of IGRA, those violations carry little effect.

Instead, the Department is forced to seek voluntary compliance from the gaming tribes. Fortunately, the vast majority of tribes strive for compliance and work with the state on most issues. There have, however, been instances where a particular tribe has defied state regulation and the state is somewhat powerless to obtain full compliance. This lack of authority is not healthy and has caused many of Arizona's leaders to promote greater regulation of the Indian gaming industry.

Although critics of this type of enhanced regulatory structure are quick to point-out that the operators of these casinos are sovereign nations, I do not believe that such a status should exempt the six billion dollar Indian gaming industry from effective regulation. I have grave concerns that attempts to preserve Indian sovereignty, at all costs, may have resulted in a dangerous dilution of regulatory responsibility that will eventually threaten the viability of this cash industry.

Proposed Reforms

Many of the issues which I have addressed could conceivably be resolved through amendments to the Indian Gaming Regulatory Act . Arizona Senator John McCain's pending legislation provides an excellent starting point for constructive reforms in the area of Indian gaming. It is critical, however, that such legislation be complimented by providing the states and the tribes with some parameters for the of the scope of gaming that is to be negotiated under IGRA. That is consistent with the position being advanced by the National Association of Governors. Equally important is the necessity to create a mechanism by which the states may take direct enforcement action against tribes who violate federal law and/or state gaming compacts. This concern has been expressed by the National Association of Attorneys General. There is no question that reforms of this nature would be controversial. However, I believe that such reforms are absolutely essential for Indian gaming.

Conclusion

In conclusion, this Commission will undoubtedly have an opportunity to hear from many Indian tribes regarding the economic importance of gaming to their respective communities. In fact, some tribes have emphasized the importance of this industry by referring to Indian gaming as the "modern-day buffalo".

As a native Arizonan who was quite familiar with the quality of life on Indian reservations in this state prior to gaming, I, too, can attest to the fact that gaming revenues have provide Indian tribes with an infusion of financial resources that is long overdue. It is because gaming has become the lifeblood of many Indian tribes that I believe there is an even greater obligation to preserve this industry. Effective regulation and enforcement are the keys to such preservation. For unless Indian gaming is kept free of fraud, corruption and crime, history may well repeat itself and this enormous economic opportunity will meet the same unfortunate fate of the buffalo.