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INTRASTATE GAMING LEGISLATION UPDATE

by Robert W. Stocker II

Notwithstanding so-called “Black Friday,” the move to legalize internet gaming in the United States is proceeding forward at a determined pace. A quick update of federal and state developments is in order now that the early group of internet gaming conferences has passed by and we are in the summer doldrums.

With the federal government mired in a historic budget debate, federal internet gaming legislation remains on the back burner. While the budget battle is focused on an August 1 deadline, it may very well extend into the fall, with presidential election fever kicking into high gear then. This continues to present significant obstacles to enactment of federal internet gaming legislation. Consequently, intrastate internet gaming continues to be a hot topic at the state level.

The District of Columbia’s intrastate gaming legislation is a hot topic in Washington. *The Washington Post* has been publishing articles critical of the enactment of the legislation. In a July 4 editorial, the newspaper raised questions concerning technology security, the impact on local neighborhoods, and the federal government’s position on internet gaming. The heat is clearly being placed on the D.C. Lottery and the D.C. Council. It remains to be seen if and how rapidly implementation of the legislation will occur. City officials announced on Monday that the start date will be no earlier than October and is likely to be deferred into 2012.

The California Oversight Committee conducted an information hearing on Tuesday (July 12) on both the Wright and the Correa intrastate internet gaming bills. Senator Correa has filed amendments to his bill (SB 40) that (1) open the market to all card rooms and tribes without the requirement for a consortium and (2) require licensees to apply for a license within 90 days after enactment of the legislation together with a prepayment of \$50,000,000 against future revenues, with that prepayment jumping to \$250,000,000 if the application is filed after the first 90 days. The fee structure proposed by Senator Correa is strongly opposed by the industry.

The Florida legislature has adjourned for the year. However, this is the time of year when 2012 legislative efforts commence in earnest.

Efforts to bring the various elements of the gaming industry together in support of a comprehensive intrastate gaming bill are continuing and are expected to gain momentum in the coming months.

New Jersey legislators continue to work on legislation designed to address the concerns expressed by Governor Christie in his veto of the bill passed by the legislature this past spring. Governor Christie continues to profess no interest in running for President on the Republican ticket, notwithstanding the general lukewarm reaction to the current field of candidates. Should Governor Christie have a change of heart, this would adversely impact enactment of intrastate gaming legislation in New Jersey. If he remains firm in his non-candidacy, then prospects for enactment of legislation acceptable to the Governor increase significantly.

Other states, including Nevada, Illinois, and Iowa, remain in the mix. However, at least two of those states (Nevada and Illinois) are not expected to make a major move without a sign-off from the federal government.

THE RINCON DECISION AND WHY IT MATTERS

by Dennis J. Whittlesey

The Supreme Court has refused to consider the decision of the Ninth Circuit rejecting a Class III Tribal-State Gaming Compact negotiated by former California Governor Schwarzenegger with the Rincon Band of Luiseno Mission Indians. The issue of this case's impact on Indian gaming and state governments is already a topic of international debate.

The Rincon Band challenged the legality of California's "second generation" Compacts pursuant to which the signatory tribes would be entitled to increase their slot machine count in return for paying percentages of the new machine revenue to the state's General Fund. The Ninth Circuit had affirmed a lower court decision that the new financial concessions were nothing more than a state tax on tribal casino revenues which is prohibited by the federal Indian Gaming Regulatory Act ("IGRA"). Rincon had refused to sign the new Compact which already had been executed by several other tribes, electing to demand that it be given the expanded gaming opportunity without making the new financial concessions.

While Rincon Band has stated that it intends to demand the additional slot machines, there are rumors that some tribes intend to seek recovery of the "illegal" payments they made pursuant to their "new" Compacts. Should that occur, the total due bill could total tens of millions of dollars, and it is well known that California is virtually broke – the condition that led to Schwarzenegger's effort in the first place.

Since Class III gaming can only be offered pursuant to a Compact, tribes such as Rincon proposing to exceed the gaming levels permitted by a valid Compact could run afoul of the federal enforcement actions. For

this reason, a number of California tribes with the same Compact could elect to stay with the expanded slot machine inventory permitted thereby and continue making the payments as a cost for the greater total revenue numbers they have been realizing.

The outcome of this litigation almost certainly will impact the efforts of all cash-strapped states to generate new revenues through tribal casinos.

It should be noted that the federal Indian gaming law does authorize the states to receive compensation for costs related to tribal gaming such as regulation and gaming addiction, and to offset the effects of casinos on surrounding communities. However, as noted above, states are prohibited from assessing taxes on tribal casino revenues, so unjustified payments to a state's General Fund are no longer permissible unless the tribes are getting something in return for the required payments, such as those authorized by IGRA. Another vehicle for state receipt of casino payments above those payments must be in exchange for some benefit deemed "exclusive" to the tribe. To this end, it is fact that a number of other Governors have attempted to create "exclusive grants" in favor of Compact signatory tribes in return for payments to the state treasuries.

The new concern is that the *Rincon* decision brings into question the legality of all tribal financial concessions above and beyond the reimbursement of actual costs incurred by the states. But perhaps more far-reaching is that it almost certainly jeopardizes any future efforts by any Governor to negotiate significant financial payments through Compacts.

In short, the decision appears to be a "game changer" in the states' attempts to generate new revenue through tribal casinos.

DETROIT CASINOS' JUNE REVENUES INCREASE FROM SAME MONTH LAST YEAR: MICHIGAN GAMING CONTROL BOARD RELEASES JUNE 2011 REVENUE DATA

by Ryan M. Shannon*

The Michigan Gaming Control Board ("MGCB") released the revenue and wagering tax data for June 2011 for the three Detroit, Michigan, commercial casinos. The three Detroit commercial casinos posted a collective 3.2% increase in gaming revenues compared to the same month in 2010. Aggregate gross gaming revenue for the Detroit commercial casinos decreased, however, by approximately 5.6% compared to May 2011 revenue figures, continuing the trend of a similar drop in revenues between May and June in prior years.

MGM Grand Detroit posted positive gaming revenue results for June 2011 as compared to the same month in 2010, with gaming revenue increasing by more than 2.8%. MGM Grand Detroit continued to maintain the largest market share among the three Detroit commercial casinos, and had total gaming revenue in June 2011 of more than

\$47.5 million. MotorCity Casino had monthly gaming revenue approaching \$37 million, and posted a less than 1% improvement in June 2011 over its June 2010 revenues. Greektown Casino also posted a positive gaming revenue result in June 2011 compared to June 2010, with a 7.1% increase in total revenues. Greektown had gaming revenue of approximately \$29 million for June 2011.

The revenue data released by the MGCB also includes the total wagering tax payments made by the casinos to the State of Michigan. The gaming revenue and wagering tax payments for MGM Grand Detroit, MotorCity Casino, and Greektown Casino for June 2011 were:

Casino	Gaming Revenue	State Wagering Tax Payments
MGM Grand Detroit	\$47,531,731.66	\$3,850,070.26
MotorCity Casino	\$36,826,112.83	\$2,982,915.14
Greektown Casino	\$28,949,876.41	\$2,344,939.99
Totals	\$113,307,720.90	\$9,177,925.39

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