

TESTIMONY OF JAMIE HUMMINGBIRD, CHAIRMAN
NATIONAL TRIBAL GAMING COMMISSIONERS / REGULATORS
SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON INDIAN GAMING REGULATION

DIRKSEN SENATE OFFICE BUILDING – ROOM 628
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Good afternoon Chairman Akaka, Vice-Chairman Barrasso, and Members of the Committee. My name is Jamie Hummingbird, Chairman of the National Tribal Gaming Commissioners / Regulators and member of the Cherokee Nation where I serve as Director of the Gaming Commission.

The National Tribal Gaming Commissioners / Regulators is an organization comprised of tribal gaming regulators from across America whose purpose is to promote the exchange of thoughts, information and ideas in the pursuit of regulatory practices that are consistent, stable, and fair.

On behalf of the National Tribal Gaming Commissioners / Regulators I would like to express our thanks for begin provided the opportunity to offer comments before the Committee from the perspective of a tribal gaming regulator. I would also like to thank the Committee and the National Indian Gaming Commission (NIGC) for the approach you have undertaken in seeking input from Tribes and their Gaming Commissions and Agencies in a transparent manner.

The following comments are based upon the views of the membership of the National Tribal Gaming Commissioners / Regulators (NTGCR) experiences and their familiarity with the subject of today's hearing. Hopefully the comments will assist with a better understanding as to the manner by which the day-to-day regulators of Indian gaming operations view the role of the NIGC and the Tribal regulators in regard to their specific responsibilities.

DEFINING THE REGULATORY STRUCTURE

Prior to the enactment of the Indian Gaming Regulatory Act (IGRA; the Act) in 1988, each Tribe's Tribal Gaming Regulatory Authorities (TGRA) played a pivotal role in overseeing the conduct of gaming offered on its respective Indian lands. It was in this pre-IGRA era that the principles of regulation, roles and responsibilities of gaming regulators were established, namely: protection of the tribe's assets; protection of the integrity of the gaming environment; and accountability of the gaming operations. These principles of regulation were included as part of the IGRA and remain the foundation for each TGRA today.

One constant concept incorporated in the regulations developed by the various Tribes and their TGRAs was that they were and remain an exercise of the tribe's inherent sovereign authority to

determine the conduct of their own affairs. This concept, although stated in a different manner, was articulated in the discussions and hearings held by the Select Committee on Indian Affairs leading up to the passage of and contained within the bill that would become the Indian Gaming Regulatory Act, Senate Bill 555. This concept of tribal sovereign authority is reflected in the primary goal of the IGRA, which is to “preserve the right of tribes to self-government.” The senate report discussing S. 555 stated:

“In determining what patterns of jurisdiction and regulation should govern the conduct of gaming activities on Indian lands, the Committee has sought to preserve the principles which have guided the evolution of Federal-Indian law for over 150 years. The Committee recognizes and affirms the principle that by virtue of their original tribal sovereignty, tribes reserved certain rights when entering into treaties with the United States, and that today, tribal governments retain all rights that were not expressly relinquished.”

The Committee also sought to balance the interests of the states and the federal government along with those of the tribes. The language contained in the IGRA provided the foundation on which the Indian gaming regulatory structure would be built.

IGRA required tribes to draft gaming ordinances that established their respective regulatory authorities to preside over the regulation of gaming activities occurring on tribal lands. The Act further clarified the role of Tribal gaming regulators at 25 USC 2701 by specifying:

“The Congress finds that...

(5) Indian tribes have the **exclusive right to regulate gaming activity on Indian lands** if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.”

The Act also created the NIGC to provide the federal presence in the Indian gaming regulatory realm. When necessary, the various states were expected to utilize their existing regulatory bodies or create them pursuant to the terms of a tribal-state compact.

With the advent of game classifications, games were placed in various categories which were subject to different regulatory systems. The responsibility for regulating the various classes of gaming was delineated as follows:

Class I Gaming – social or traditional games played as a part of tribal ceremonies or celebrations falls under the exclusive jurisdiction of the tribes.

Class II Gaming – bingo, pull-tabs, instant bingo, non-house banked card games and other similar games wherein the tribal gaming regulatory authorities were established as the primary regulators over gaming activities with the NIGC providing oversight.

Class III Gaming – all other forms of gaming that are not Class I or Class II, which are traditionally considered slot machines, horse-racing, and house banked card games, could only be played in accordance with the terms of a tribal-state compact in which regulatory responsibility was shared between the states and tribes.

TRIBAL GAMING REGULATORY AUTHORITIES – ROLES AND RESPONSIBILITIES

IGRA required tribes to enact gaming ordinances, subject to the review and approval of the Chairman of the NIGC, that provides six (6) basic requirements:

1. The Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;
2. Net revenues from any tribal gaming are not to be used for purposes other than:
 - a. to fund tribal government operations or programs;
 - b. to provide for the general welfare of the Indian tribe and its members;
 - c. to promote tribal economic development;
 - d. to donate to charitable organizations; or
 - e. to help fund operations of local government agencies;
3. Annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;
4. All contracts for supplies, services, or concessions for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;
5. The construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and
6. There is an adequate system which ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis.

In order to fulfill this mandate, TGRAs must evaluate their Tribe's gaming environment and devise a set of rules and regulations that is compatible with their unique circumstances. As extensions of the gaming ordinances, these regulations clarify the duties, authorities, and methods by which tribal gaming facilities are to be governed. The licensing of gaming facilities, individuals and vendors, approval of games that are to be offered, handling tort and prize claims, surveillance, security, auditing, and overseeing compliance with environmental, public health and safety activities.

Tribes also utilize internal control standards as a tool to gauge a gaming facility's level of compliance with applicable laws and regulations. As you may be aware it was the

National Indian Gaming Association (NIGA) and the National Congress of the American Indians (NCAI) Tribal Leaders Task Force in the 1990's that had the foresight to organize a group composed of Tribal regulatory professionals to develop Tribal Minimum Internal Control Standards based upon gaming industry standards. This group developed the first set of Tribal Minimum Internal Control Standards (MICS) that was later adopted by the NIGC as its MICS as a regulation. Since that time the NIGC has called upon tribal professionals to review and/or assist in the development of various Indian gaming regulations.

In addition since the development of the NIGA/NCAI Task Force, Tribes developed their own internal policies, procedures, and regulations in regard to day-to-day regulation. The NTGCR has assisted Tribes in developing their own internal regulations and procedures that have assisted many if not most TGRAs to be independent of the possible influence of tribal politics.

Numerous other tools are utilized in these efforts, none more effective than the employment of qualified personnel. The array educational and training skill sets of regulatory personnel range from former law enforcement and former military personnel to accountants, auditors, surveillance, and information systems professionals. This does not include other professionals retained by gaming regulators in the performance of their duties, such as professionals in the areas of law, environmental health, and risk management.

It is estimated that there are over 628,000 persons employed by or in service to tribal gaming facilities. These persons are employed by the gaming facility, vendors, and third-party lessees. The vast majority of these individuals must successfully complete a background investigation in order to be considered eligible to work in a tribal gaming facility. Most often, the background investigation is performed by the TGRA, but may also be conducted by a state regulatory agency pursuant to a tribal-state compact. The results of all investigations are provided to the NIGC for their review. Further, these investigations are performed at regular intervals after a person and/or vendor receives their initial gaming license, a large number of which must undergo the process on an annual basis.

Currently, there are an estimated 3,500 individuals directly employed by tribal gaming regulators that oversee all tribal gaming operations on a daily basis. In addition, the National Indian Gaming Commission directly employs roughly 100 people to carry out its responsibilities. After accounting for the regulatory staff employed by the respective state gaming agencies and there are approximately over 4,000 individuals that monitor and ensure the maximum level of compliance with all gaming laws and regulations across the nation in Indian country.

These resources, including those utilized by the state and federal governments, are paid for by tribes. Some individual TGRAs, by virtue of the number and/or size of their gaming operations, maintain operating budgets that rival that of the NIGC.

According to data contained in the NIGA 2009 economic impact report on Indian gaming, there are 237 Indian tribes operating 446 gaming facilities in 28 states. As a part of this, tribes spent over an estimated \$350 million in the following areas to regulate Indian gaming:

- ◆ \$260 million to fund tribal gaming regulatory authorities;
- ◆ \$80 million to fund state regulatory agencies;
- ◆ \$14 million to fund the National Indian Gaming Commission.

TGRAs also call upon outside agencies as necessary to address issues warranting their particular expertise. Tribal, federal, and/or local law enforcement may assume control over any potential criminal activity. Likewise tribal prosecutors, local district attorneys, or the United States Attorney General's office may prosecute any crime identified at a tribal gaming facility. Across the country, state and federal attorneys have successfully prosecuted those that would jeopardize the integrity of the gaming facilities.

The Department of the Treasury, through its various agencies, receives regular contact from tribal gaming regulators and casino personnel as a part of maintaining strict oversight of transactions. Whether complying with the requirements of the Internal Revenue Service, the Financial Crimes Enforcement Network, or the Office of Foreign Asset Control, tribes maintain strong lines of communication with federal agencies.

Tribes also work closely with the Secret Service in the event any potentially counterfeit currency is confiscated. These relationships have led to several major arrests and prosecution of the offenders. Tribes have also assisted federal task forces investigating money laundering

These same cooperative relationships have been established with local police departments and sheriff's offices.

INDIAN GAMING – PAST, PRESENT, AND FUTURE

Tribes have historically maintained a regulatory presence at its gaming facilities since their inception. This presence, although similar to the current state of Indian gaming regulation, began at a time when the number of tribes participating in gaming and the number of facilities they operated were a fraction of the number currently in operation. The early regulatory systems were simpler in nature and relied heavily on records to be maintained either manually or within limited electronic data systems.

Over the past several decades, tribal gaming facilities began to expand their locations and increased the level of sophistication of its gaming activities by using the technology available at the time as permitted by the IGRA. Tribal regulators also grew in sophistication. Now, tribal gaming facilities and regulators use state-of-the-art surveillance systems and computer monitoring systems to keep a watchful eye over tribal assets and gaming facility activities.

In addition to utilizing the newest technology to assist in overseeing tribal gaming operations, TGRAs have become more adept in using qualified third parties for support. It is not uncommon for a tribal gaming regulatory authority to employ individuals with credentials such as Certified Fraud Examiner, Certified Public Accountant, Certified Internal Auditor, Software Engineer, Systems Administrator, and Network Security Administrator, Pre-employment Screening and Background Investigation Specialist to name just a few. Each of these disciplines has aided in the development or refinement of tribal gaming regulations and internal controls.

Educating tribal gaming regulators is a continual process, requiring constant monitoring of the gaming environment in an effort to prepare for emerging technology as well as changes in the legislative setting. TGRAs have led the way in developing meaningful regulations for their operations and continue to impact regulation development at the state and federal level. Tribal working groups working in various states as well as those formed to address federal regulations offer a collaborative means to creating effective and efficient regulations.

That is not to say that once a regulation has been adopted that the process ends. Regulations must be regularly reviewed to determine their validity and effectiveness in relation to the state of the gaming industry. For example, in the past several years, gaming vendors have introduced wireless gaming and systems-based / server-assisted games. Most recently, internet gaming has become a topic that has garnered a great deal of attention by everyone in the gaming industry, including tribes, regardless of their role. This issue and its potential impact on tribal gaming, like so many other developments in the gaming industry over the past three decades, will be carefully monitored by tribes so that a system of regulation can be established.

Several amendments to the Indian Gaming Regulatory Act have been proposed over the years. Two (2) of the more recent proposed amendments focused on off-reservation gaming and expanding the role and authorities of the National Indian Gaming Commission in light of the decision rendered in the *Colorado River Indian Tribes v. National Indian Gaming Commission*, 466 F.3d 134 (D.C. Cir. 2006)(i.e. the CRIT case). Tribes, too have sought to amend the Indian Gaming Regulatory Act so to address the decision rendered by the Supreme Court in the *Seminole Tribe of Florida v. Florida, et. al.*, 517 U.S. 44, whereby the Court ruled that IGRA requires compacts are to be negotiated in good faith by both the states and tribes.

While everyone that deals with Indian gaming may agree that the IGRA is less than perfect, it has proven to be a stable base on which so much has been built. The Act has survived numerous amendment attempts due in large part to the great many successes that overshadow the few failures that have been experienced. Tribes have consistently demonstrated substantial compliance with all tribal, federal, and, where applicable, state laws and regulations. These facts have been attested to by both state and federal oversight officials.

CONCLUSION

Indian gaming had humble beginnings, as did the tribal gaming regulators. The growth of Indian gaming under the IGRA has contributed to success of Tribal economic development and has led to the building of world-class gaming facilities. Along the way, tribal gaming regulators have evolved into world-class regulators. The responsibility of regulating tribal gaming facilities is a task that tribal gaming regulators take very seriously. It is the obligation to our people that drives us to excel.

It is our membership's belief that tribal gaming regulators are capably performing the due diligence necessary to protect the assets of the Tribes and are proud of our history of protecting the integrity of the Indian gaming industry.