

AMERICAN CASINOS A Development Summary

With the discussion surrounding a casino in downtown Rochester reactivated in late 2004, a review of how gaming has developed in the United States and in New York State is useful to evaluating the pervasiveness and power of this kind of development.

GAMING IN AMERICA

The history of legalized gambling in America can be traced back to 1931 when the state of Nevada, its minerals-based economy in ruins, authorized virtually all forms of gaming as a replacement for its exhausted mines. The deepening depression forced many states to consider new forms of revenue, and as a result pari-mutuel betting (e.g., horse racing, dog racing and jai alai) was legalized as a tax revenue source to help fund public services in a number of states.

The first state lottery was authorized in 1963 by New Hampshire, and has now expanded to multi-state lottery pools.

Nevada remained the only state with casinos for over four decades, until 1977 when the citizens of New Jersey voted to authorize the establishment of casinos in Atlantic City as an economic regeneration tool. Between 1986 and 1996 the number of states authorizing casinos increased from 2 to 10, and the number of casinos outside of Nevada and New Jersey increased to 300. In 1989, Iowa authorized riverboat gambling, and Illinois followed suit a year later.

By the end of the 20th century, gambling was firmly established as an accepted form of entertainment and commerce throughout most of the U.S.

INDIAN GAMING

In 1953, the U.S. Congress passed Public Law 280, which by the end of the 20th century added to a complex matrix of jurisdictional conflict that now defines tribal governance. PL280 authorized a transfer of federal law enforcement power to the state, and the 16 states now under PL 280 have assumed some jurisdiction over crimes committed by tribal members on tribal lands.

Cabazon Band of Mission Indians vs. City of Indio

It is on PL 280 that the decision in a major U.S. Supreme Court case turned in 1987, one which has affected Indian casino development nationwide. As part of a longer-running dispute between the Cabazon Band of Mission Indians and the City of Indio, California, the tribe in 1980 opened a poker room with help from the Dunes Hotel in Las Vegas. Within days, the local police seized the tables and chips and arrested employees for allegedly violating a City ordinance that prohibited poker games. The Ninth Circuit Court upheld the Cabazon Tribe's position, and the City appealed the decision to U.S. Supreme Court.

The court decided that while federal law gives city, county and state authorities power to enforce criminal law on Indian trust land, these laws were not intended to make tribes subject to a state's civil code. In the majority opinion, the court also noted that only the federal government has the authority to prohibit gambling on Indian reservations. If states allow a particular form of gaming within the state it has no ability to regulate similar gaming on tribal land. In the case of California, bingo and card games were legal, so the court decided the laws concerning these activities were civil, not criminal.

Indian Gaming Regulatory Act

The Cabazon decision created a fair amount of uncertainty relative to interpretation and compliance, and the federal government dealt with this uncertainty by passing the Indian Gaming Regulatory Act (IGRA) in 1988. Under this act, tribes can offer Class III games only when states allow these games elsewhere in the state. The federal courts have broadly interpreted whether state laws allow gaming. For example, when this law was passed, Connecticut allowed not-for-profits to run "Las Vegas style" casino nights as fund-raisers. That was enough for the courts to rule in favor of the Mashantucket Pequot tribe, which ultimately opened Foxwoods, now the top-grossing casino in the world.

In the late 1980s, the new IGRA and a series of legal rulings favorable to tribes legalized gaming operations on reservations in many states. By 1999, about half of all tribal members in the lower 48 states are in tribes that run a casino-style gaming operation. Today there are over 310 gaming operations run by more than 200 of the nation's 556 federally recognized tribes. Of these, 220 are "Las Vegas" style casinos with slot machines and/or table games (Class III gaming).

By the year 2000, Indian-owned gaming operations generated about \$10 billion a year in revenues, about one-sixth of total revenues generated by all legal gaming in the United States.

NEW YORK STATE EXPERIENCE

Although four casino facilities are now operating in New York State, casino gaming is prohibited under the state's constitution. However, Class III casinos (table games, slot machines) can be legally owned and operated in New York by recognized Indian tribes. This reflects the fact that the federal government alone has the authority to prohibit or authorize gambling on Indian lands – not the states.

Expansion of Gaming

The first Indian casinos in New York appeared in 1993, with the Oneida Tribe's Turning Stone Casino near Syracuse, and the casino on the Mohawk Akwesasne Reservation near the U.S.-Canadian border. Governor Cuomo did not negotiate revenue-sharing agreements in either case.

However, since the turn of the 21st century many governors around the country have begun to view casinos as a means to generate significant new revenues to fill anemic state coffers. In the case of tribal casinos, the evolution of legal compacts between a state and a tribe allow states to negotiate a percentage of the "take". The new generation of compacts being written in New York involve agreements to provide the state with approximately 25% of the gross slot machine

revenues. These arrangements have also represented a way to resolve court-ordered, Indian land claim settlements, primarily in lieu of huge cash settlement amounts and/or the confiscation of land.

Eight years after the Cuomo administration allowed the first casino in New York, Governor Pataki in 2001 called for an expansion of gaming facilities beyond the original two, with the goal of an additional six Native American casinos. Later that year, the state legislature passed legislation allowing the Seneca Nation to build three casinos in Western New York (Niagara Falls, Buffalo and Salamanca) and also authorized the construction of three more casinos in the Catskills. The Senecas had won back large tracts of land in Federal Court and reportedly only dropped their land claim for Grand Island, N.Y. after a compact agreement allowed them to build the casinos in Buffalo and Niagara Falls.

By 2002, Turning Stone was clearing annual profits of \$70-180 million by various reports, with 2,000 people employed on a payroll of \$50 million a year. (*NOTE: All casino figures are estimates as tribes in New York are not required by law or compact to publicly divulge operating or accounting numbers.*)

As of December 2004, the State has authorized three gaming licenses for tribally run casinos in the Catskills with a proposal for two more, ultimately totaling five in a region of the state easily accessed by the populations of New York City, Philadelphia and Boston.

Western New York Casinos

The new Seneca Niagara Casino in Niagara Falls opened in January of 2003, built with a loan agreement backed by a Malaysian billionaire at a reported interest rate of 29%, adjustable upward. After the first year of operation, the state got \$38 million from the Seneca Niagara Casino, with \$9.5 million going to the City of Niagara Falls. An additional \$14.3 million was reportedly spent in local area goods and services for casino operations, and \$2.6 million for enhanced police services.

Regional analysts estimated that Rochesterians were soon accounting for 9-15% of the traffic at the Turning Stone and Seneca Niagara casinos. Meanwhile, a second Western New York casino at the Salamanca reservation went under construction and opened in May 2004.

In the case of the third casino authorized for Buffalo under the 2001 compact with the Seneca Nation, negotiations have now broken down in the face of lawsuits and controversy. As of year-end 2004, it was not moving forward.

Seneca Nation Compact

Most interesting is an element in the Western New York compact that has not received much public attention. The Seneca Nation has the exclusive rights to any casino operations in a territory clearly defined in the compact – bordered by Ohio and Lake Erie on the west, to the Pennsylvania border on the south, to Lake Ontario in the north, and the Route 14 line from Sodus to the Pennsylvania border to the east. Monroe County sits within this territory.

Any violation of this arrangement would render the current Western New York compact null and void, although there are reportedly ways to circumvent this should the State and Seneca nation

agree to do so (e.g., the Mohegan Sun deal in Connecticut, whereby the Mohegan Tribe pays the Pequot Tribe \$50 million annually to operate in their territory).

IMPACT ON COMMUNITIES

An already voluminous amount of national research has been undertaken to gauge the social and economic impact of casinos on their host communities. Among those factors already explored in this still growing field are the following: job creation rates; construction and real estate development figures; tax revenues; revenue from ancillary support services; increased school and infrastructure costs; business bankruptcies; crime (both white-collar and violent); increased problem and pathological gambling; and higher rates of divorce.

One particularly well-executed analysis by the National Bureau of Economic Research published in 2002 found that on average it appears that tribal gaming operations seem to have both positive and negative spillover effects in their surrounding county. Locally, the Center for Governmental Research (working on behalf of Wilmorite Inc.) reported in mid-2004 that the impact of an Indian-owned casino on Rochester would be generally favorable.

Sovereign Land

Of all of the issues, the issue of sovereign land is arguably the most controversial. Defining “sovereignty” is very difficult – an internet search yields a mass of confusing statements and definitions. The most important message for a community, however, is that sovereign land is treated somewhat like a foreign country. Local and state laws do not apply. Therefore, unless treated specifically in the terms of the compact between the state and the tribe:

- Local land use restrictions are not enforceable;
- Most agreements are not enforceable; and,
- The earliest phase of state-tribe negotiations sets the framework for the relationship between the casino, the tribe and the locality.

Other Issues

Still unexplored issues in New York include: (1) the potential for “saturation” and its effect on the Indian casino business model; (2) the impact of substantial tribal revenues fueling significant land purchases and political contributions; and, (3) the attractiveness of urban casinos versus casinos in low-density areas.