

State gambling board backs off oversight demand for Indian casinos

The California Gambling Control Commission is retreating from an aggressive directive demanding that Indian tribes give state inspectors „prompt access“ to tribal casinos and financial records.

In October, after nearly two years of arguing over who is minding the store in California's USD 8 billion tribal gambling industry, the state commission voted to assert its oversight authority over Indian casinos.

It approved regulations that spelled out a state role in inspecting casino books, gambling operations, customer and employee access to cash, and the integrity of the games.

At the time, commission members said they were filling an oversight void created by a federal appellate court decision in late 2006 that said the National Indian Gaming Commission had no authority to regulate security standards for slot machines or other Nevada-style casino games.

But in December, the Gambling Control Commission abruptly postponed a vote that was required to ratify its October decision.

Some tribal officials said the delay signals a recognition by the state that the tribes themselves hold primary responsibility to regulate casino operations.

„The dispute really isn't about the standards. The dispute is over who has the authority to enforce them,“ said Howard Dickstein, a lawyer representing tribes including United Auburn, operator of the Thunder Valley Casino near Sacramento.

„The state apparently doesn't have adequate respect for tribal governments and their gaming agencies' independence.“

But a gambling watchdog charged that state officials are blinking under intense politicking and threats of lawsuits from the tribes.

„I think the state is caving in to tribal pressure,“ said Cheryl Schmit, director of Stand Up for California, which tracks tribal gambling issues. She said the commission „drew a line in the sand“ only to „back away“ from its „strong position.“

Evelyn Matteucci, chief counsel for the gambling commission, said in an interview that she told tribal leaders at a Dec. 18 meeting that the board would work „with representatives of the tribes to continue to negotiate the terms“ of the state's oversight role.

„We would like to keep the dialogue open,“ she said.

Under terms of California tribal gambling compacts, tribal governments must commission independent audits of casino operations from licensed state auditors.

The state is allowed to conduct limited audits of slot machine „net win“ totals under a handful of amended casino deals – in which tribes promised a share of casino revenues to the state for permission to operate more slot machines.

The regulatory dispute with the Gambling Control Commission seems to center on how aggressively state officials can demand that tribes turn over casino audits or submit to inspections – and whether such demands violate existing tribal gambling compacts.

„To say we've had a difference of opinion is an understatement,“ said John Roberts, executive director for the tribal gaming commission for the San Pasqual tribe in northern

San Diego County. „We didn't feel they had legal authority to do this. We screamed, ,You can't do it. And they said, ,Yes we can.' “

Federal authorities in 2006 canceled several planned audits into cash flow and casino operations nationally after a U.S. Court of Appeals blocked an audit of a casino operated by the Colorado River Indian Tribes in Arizona.

The ruling said the National Indian Gaming Commission has authority over „Class II“ games such as bingo, but not „Class III“ slot machines, blackjack and other games.

In written testimony last year, NGIC Chairman Philip Hogan said state regulators can participate in casino oversight when permitted under negotiated tribal-state gambling agreements. But he told the Senate Indian Affairs Committee: „We need to appreciate that vast majority of the regulation of tribal gaming is done by the tribes themselves.“

Dickstein said when the Gambling Control Commission voted to authorize „on-site compliance reviews“ of tribal casinos, it was wrongly asserting a right to financial reviews and inspections the state never negotiated in tribal gambling agreements.

Michael Lombardi, chairman of the tribal gaming commission for the Augustine Band of Cahuilla Indians in Coachella, said many tribes feared the state was overturning „a respectful government-to-government relationship“ and „supplanting the tribes as the regulators“ of casinos.

But Matteucci said the state is seeking to work with tribes – not flood Indian casinos with regulators who „just order people around and say give me your books.“

She said the Gambling Control Commission hopes to resolve the casino oversight issue „sooner rather than later.“

Dickstein said some tribes may be willing to negotiate new terms or compact amendments to clarify the state's role.

Last year, a handful of California casino tribes, including United Auburn and the Rumsey Band of Wintun Indians near Sacramento, voluntarily agreed to meet federal casino security standards that were nullified by the court decision.

Roberts said tribal groups have proposed „alternative language that we feel represented the will of the gaming tribes“ and a „commonality of interests“ with the state.

But with the issue unresolved, Dickstein said the commission is achieving a rare feat in the state's normally politically fractured Indian country.

„They're managing to unite every tribe in the state of California against them,“ he said.