IGRA Intended Better State/Tribal Relations

by W. Ron Allen

The Indian Gaming Regulatory Act of 1988 (IGRA) has had a profound impact on tribes over the past 19 years. The legislation established the National Indian Gaming Commission (NIGC) to provide federal oversight of the tribes' management and financial contracts for their gaming operations, as well as the tribes' Class II operations. There have been many articles written about whether or not NIGC has exceeded its statutory authority regarding the tribes' sovereign governmental right to regulate and manage their gaming operations.

In recent federal litigation, the *Colorado River Indian Tribes v. NIGC* court determined that NIGC does not have authority over and cannot publish Minimum Internal Control Standards (MICs) for Class III casinos. Now, NIGC asserts that this case affects only the Colorado River Tribe and not the rest of Indian Country.

I would like to take a moment to note that NIGC's efforts often misses the mark regarding what IGRA intended and what has been happening with regard to the state/tribal relations as a result of the compacts. Our experience here in Washington State exemplifies the collaboration between tribes and states with respect to the integrity of the tribal operations and the public interest. Yes, we do have challenges regarding roles and responsibilities, but the compacts and the conditions we have negotiated with respect to the regulatory oversight of our gaming operations have produced not only well-run casinos, but have enhanced a co-regulatory environment within a respectful "government-to-government" relationship. Here in Washington State, we have had an accord (signed in 1989) between our governments that does not try to debate which sovereign is more supreme. Instead, we focus on how to best address the challenge at hand, e.g. the best approach to allow the tribes to advance their gaming enterprises, while protecting the public interest.

Our concern regarding NIGC's efforts to establish additional regulations for Class III operations is that it undermines the positive "government-to-government" relationship between the tribes and their respective states. Instead of attempting to add potentially contradictory regulations to burden our operations, NIGC should be enhancing and encouraging stronger state/tribal regulatory oversight such as in our state. We believe that our casino businesses are managed to meet and exceed the integrity and intent of IGRA. The Act recognizes the tribes' right to engage in the gaming industry with the same games allowed in their states and envisioned strong, effective regulatory oversight of the operation. The Act did not dictate how regulatory oversight was to be administered, but directed that it would be addressed within the gaming compacts negotiated between the tribes and the states. That is exactly what happened in Washington State.

We firmly believe that the primary regulatory role is to be managed by the tribal regulatory agencies, which provide information to the state so it can effectively monitor tribal gaming activities for compliance with the compacts and IGRA. The compacts are designed to avoid duplication of regulatory oversight and to avoid unnecessary burdens that provide no added value. Even though we may wrestle over the state and tribal governmental roles and responsibilities, we are making it work without additional NIGC-imposed MICs.

Recently, 28 of the 29 tribes in Washington State completed new amendments to our compacts resulting in a few new operational features (including placing cash into the electronic machines and single-button play). True to our established government-to-government relationship, the state gambling commission and the tribal gaming agencies (TGAs) have already discussed regulatory implementation of the new features (including surveillance for drops, cash audit reports, etc.). Internal control standards for the new features will be written by the TGAs, with concurrence by the state agency. There is only a limited role for the federal government because IGRA placed the emphasis on the tribal-state relationship. Together with the state, we also addressed other operational issues that result from casino environments including our shared desire to address problem gambling through prevention and treatment programs, and discouraging smoking. Neither of these issues could have been addressed effectively with tribes outside of a compact commitment.

In conclusion, I return to my opening comment that after the *CRIT* decision, NIGC should be focusing on making IGRA work between the tribes and the states instead of attempting to expand its federal authority. Our governor agrees and has written a letter to our congressional delegation strongly supporting the tribes' objection to any legislative amendments to IGRA that would expand NIGC jurisdiction to intrude on the state authority and positive relationship with the tribes. The tribes were never happy about how IGRA eroded our sovereignty by requiring the tribes to negotiate with the states regarding the scope of our gaming operation and extent of the regulatory oversight, but we have made it work. NIGC should take notice and support this approach to be assured of the integrity of the game instead of attempting to expand its authority and continuing to burden our operations with unnecessary federal regulations. ♣

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