

LEGAL SERVICES

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MEMORANDUM

April 28, 2017

SUBJECT: Indian gaming (CSSB 78(FIN); Work Order No. 30-LS0534\E)

TO: Representative Neal Foster
Attn: Jane Pierson

FROM: Hilary V. Martin 
Legislative Counsel

You have asked whether CSSB 78 could allow for expansion of Indian gaming in Alaska.

CSSB 78 authorizes people to donate a portion of their permanent fund dividends to be entered into a raffle (and for some of the donation to be used for education). Raffles are currently authorized in this state.¹ The bill allows the commissioner of revenue to conduct a raffle.² The authorization to conduct a permanent fund dividend raffle does not open up the state to Indian gaming beyond what is already done through the current authorization of other raffles.

The federal Indian Gaming Regulatory Act (IGRA) regulates when and what type of gaming or gambling that Indian tribes may offer on Indian lands.³ The IGRA divides gaming into three classes:

- (1) Class I gaming includes social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations;
- (2) Class II gaming includes bingo, lotto, pull-tabs, punch boards, tip jars and non-banking card games, as well as banking card games operated on or before May 1, 1988; and
- (3) Class III gaming includes casino-type gambling, pari-mutuel horse and dog racing, lotteries, and all other forms of gaming that are not class I or II gaming.

Class I gaming on Indian lands is within the exclusive jurisdiction of the tribes and is

¹ AS 05.15.100.

² Under AS 05.15, only municipalities or qualified organizations with a permit can conduct raffles (or an operator can conduct a raffle on behalf of a municipality or qualified organization).

³ 25 U.S.C. § 2701 et seq.

excluded from the provisions of the IGRA. Class II gaming on Indian lands is within the jurisdiction of the tribes but is subject to the provisions of the IGRA, including oversight by the National Indian Gaming Commission. Class III gaming activities are lawful on Indian lands only if authorized by a tribal ordinance or resolution, located in a state that permits such gaming for any purposes by any person, organization, or entity, and conducted in conformance with a tribal-state compact entered into by the tribe and state.

A raffle is a type of class III gaming. As raffles are already authorized in the state, a tribe could currently conduct this type of activity on Indian lands if the tribe entered into a compact with the state to authorize such activities. It is possible, however, that allowing any type of class III gaming in the state could allow for tribes to exercise all types of class III gaming in the state.

There have been conflicting decisions on whether allowing one type of class III gaming in the state would allow an Indian tribe to conduct any type of class III gaming on Indian lands. The Second Circuit determined that because the state of Connecticut allowed charities to conduct "Las Vegas nights" that the tribe could conduct all forms of class III gaming.⁴ The Ninth Circuit, in a later case, upheld a federal district court decision that found that Indian tribes were authorized to conduct only those types of class III gaming that were allowed in the state.⁵ Some class III games are already operating in the state (bingo is class II gaming, while lotteries are class III, and the classics and similar games in the state are probably also class III gaming). As there have been conflicting decisions, I can't say with any certainty what a federal court would ultimately decide, although it seems likely a court in Alaska would follow Ninth Circuit court precedent and find that only those types of class III gaming allowed in the state would be allowed by a tribe.

While the state and a tribe could enter into a compact to conduct raffles pursuant to IGRA, as raffles are currently authorized in the state, CSSB 78(FIN) does not appear to increase the risk of casino-style gambling in the state.

If I may be of further assistance, please advise.

HVM:dls

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⁴ *Mashantucket Pequot Tribe v. State of Conn.*, 913 F.2d 1024, 1029 - 1032 (2nd Cir. 1990).

⁵ *Coeur d'Alene Tribe v. State of Idaho*, 51 F.3d 876 (9th Cir. 1995), *aff'g* *Coeur d'Alene Tribe v. State of Idaho*, 842 F.Supp. 1268 (D. Idaho 1994).