HB

327

MEMORANDUM

STATE OF ALASKA
DEPARTMENT OF REVENUE

TO: The Honorable Drue Pearce
President of the Senate

DATE: April 28, 1995

TELEPHONE: (907) 465-2229

SUBJECT: Release of Monte Carlo Information

FROM: Dennis Poshard
Director
Charitable Gaming Division

Attached is the information you requested regarding net proceeds of Monte Carlo permit holders. In our earlier conversation, I informed you that the information was confidential taxpayer information. Since that time, I have received an oral opinion from the Attorney General's office allowing me to release the information to the legislature for the purposes of making public policy decisions. The basis for this determination is an Attorney General's opinion of January 12, 1989 regarding the release of taxpayer information.

However, the information retains its confidential status. It should be viewed only by legislators and necessary staffers. Public release of this information could result in severe penalties. I am sure that you will use the information in a responsible manner and am happy to provide it to you.

If our office can provide further assistance, please call me at 465-2229.

PERMITTEES WITH 1994 MONTE CARLO PERMITS

> $5,000

5

	permit #	organization		net
1	94-0235	ALASKA TELEPHONE ASSOCIATION	$	5,266.65
2	94-1615	UNALASKA DUTCH HARBOR CHAMBER/COMMERCE		6,856.00
3	94-1205	GREATER JUNEAU CHAMBER OF COMMERCE		7,668.08
4	94-0179	NATIONAL MULTIPLE SCLEROSIS SOCIETY AK C		9,531.00
5	94-0657	ALPINE ALTERNATIVES		11,165.75
		totals	$	40,487.48

$1,001 -$5,000

16

	permit #	organization		net
1	94-0532	COPPER RIVER BASIN LIONS CLUB	$	1,027.00
2	94-0199	BPO ELKS LODGE #1483 CORDOVA		1,176.00
3	94-0223	CHUGIAK EAGLE RIVER CHAMBER OF COMMERCE		1,182.85
4	94-0260	FOE AUXILIARY #162		1,253.11
5	94-0104	FORT GREELY OFFICERS WOMEN'S CLUB		1,364.30
6	94-0001	NATIONAL EDUCATION ASSOCIATION ALASKA		1,367.00
7	94-1541	ALASKA MINERS ASSOCIATION/NOME BRANCH		1,391.53
8	94-1508	USCG OFFICERS WIVES CLUB OF KODIAK		1,432.00
9	94-1237	KID'S STOP, INC.		1,914.66
10	94-1053	KODIAK LIONS CLUB		2,192.90
11	94-0508	GOLD RUSH DAYS INC.		2,210.00
12	94-0240	LOYAL ORDER OF MOOSE #1266		2,262.55
13	94-0899	CIRCLE DIST HISTORICAL SOCIETY INC		3,217.08
14	94-0340	DILLINGHAM BEAVER ROUNDUP FESTIVAL ASSOC		3,228.87
15	94-0307	MUSCULAR DYSTROPHY ASSOCIATION, AK CHPT.		3,380.00
16	94-1309	PRINCE WILLIAM SOUND TOURISM COALITION		4,402.35
		totals	$	33,002.20

$1 - $1,000

15

	permit #	organization		net
1	94-0271	FAIRBANKS CURLING LIONS	$	116.50
2	94-0201	BPO ELKS LODGE #1551 FAIRBANKS		225.00
3	94-1477	GOLDEN FLEECE CLUB		350.00
4	94-0555	MIDNIGHT SUN SWIM TEAM INC.		373.50
5	94-0434	ALPINE CIVIC CLUB		444.50
6	94-1535	CITY OF ANIAK		475.29
7	94-0133	EAGLE RIVER LIONS CLUB		476.00
8	94-1315	ALASKA PUBLIC EMPLOYEES ASSOCIATION/AFT		515.00
9	94-1175	ANCHOR POINT CHAMBER OF COMMERCE		583.00
10	94-1360	ALASKA STATE ASSOC OF LIFE UNDERWRITERS		735.00
11	94-0664	ALASKA STATE AFL-CIO		798.50
12	94-0341	ANCHORAGE RESTAURANT & BEVERAGE ASSOC		879.00
13	94-0887	BPO ELKS LODGE #1773 SEWARD		896.00
14	94-1179	AMVETS POST #4		987.72
15	94-0204	WILLOW AREA COMMUNITY ORGANIZATION		992.62
		totals	$	8,947.63

< $0.00

10

	permit #	organization	net
1	94-0010	GREATER ANCHORAGE INC.	$ (4,243.41)
2	94-1588	CHUGIAK AREA BUSINESS ASSOC. INC.	(40.25)
3	94-0153	BETHEL BROADCASTING INC.	0.00
4	94-0283	AMVETS POST 2 INC.	0.00
5	94-0308	LOYAL ORDER OF MOOSE LODGE #1534	0.00
6	94-0442	HOMEBUILDERS ASSOC OF JUNEAU	0.00
7	94-0453	CORDOVA CHAMBER OF COMMERCE	0.00
8	94-0492	KENAI PENINSULA HOCKEY ASSOCIATION INC	0.00
9	94-0524	EMBLEM CLUB #142 SITKA	0.00
10	94-0528	F.O.E. #3525	0.00
		totals	$ (4,283.66)

delinquent

18

	permit #	organization	
1	94-0063	ALASKA INFORMATION RADIO READG. ED SERV	no 94 afs
2	94-0071	JUNEAU YOUTH FOOTBALL LEAGUE, INC.	no 94 afs
3	94-0106	BPO ELKS LODGE #1595 WRANGELL	no 94 afs
4	94-0128	YUKON QUEST INTERNATIONAL	no 94 afs
5	94-0268	EMBLEM CLUB #463 HAINES	no 94 afs
6	94-0757	TALKEETNA CHAMBER OF COMMERCE	no 94 afs
7	94-0817	MARCH OF DIMES ALASKA CHAPTER	no 94 afs
8	94-0834	ALASKA WOMEN'S POLITICAL CAUCUS	no 94 afs
9	94-0869	ALASKA WOMEN IN MINING (FBK)	no 94 afs
10	94-0890	AMERICAN CANCER SOCIETY AK DIV INC	no 94 afs
11	94-0923	CHALLENGE ALASKA	no 94 afs
12	94-0993	ALASKA SUPPORT INDUSTRY ALLIANCE	no 94 afs
13	94-1185	PETERSBURG BUSINESS & PROFESSIONAL WOMEN	no 94 afs
14	94-1255	ALASKA INDEPENDENT BLIND	no 94 afs
15	94-1277	INTL ASSOC INSULATORS & ASBESTOS WORKERS	no 94 afs
16	94-1477	GOLDEN FLEECE CLUB	no 94 afs
17	94-1561	BOREALIS KIWANIS, INC.	no 94 afs
18	94-1630	CENTER FOR PACIFIC RIM STUDIES & CULT.	no 94 afs

total # of permittees	total net proceeds
64	$ 78,153.55

9-LS1170\A
Luckhaupt
5/7/95

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE PHILLIPS

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act relating to compacts under the Indian Gaming Regulatory Act, authorizing the governor to negotiate with Indian tribes recognized by the United States under the Indian Gaming Regulatory Act and requiring the governor to submit compacts negotiated under the Indian Gaming Regulatory Act to the legislature for approval; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 05 is amended by adding a new chapter to read:

CHAPTER. 18. INDIAN GAMING REGULATORY ACT COMPACTS.

Sec. 05.18.010. FINDINGS; INDIAN GAMING REGULATORY ACT. The legislature finds that 25 U.S.C. 2701 - 2721 (Indian Gaming Regulatory Act) provides Indian tribes recognized by the federal government under that Act with the authority to conduct certain types of gaming activities under a compact negotiated between the state and the Indian tribe. The legislature also finds that the proliferation of gaming

can have considerable economic and social consequences for the people of the state. It is the purpose of this chapter to clarify Alaska law relative to these compacts and to facilitate careful and well-reasoned action in entering into these compacts.

Sec. 05.18.020. GOVERNOR TO NEGOTIATE COMPACT. The governor may negotiate the terms of a proposed compact under 25 U.S.C. 2701 - 2721 (Indian Gaming Regulatory Act) with an Indian tribe recognized under that Act. The governor shall submit a proposed compact negotiated under this section to the legislature for approval under AS 05.18.030. A proposed compact not approved by the legislature under AS 05.18.030 is not binding on the state and is not a compact under 25 U.S.C. 2710(d)(3).

Sec. 05.18.030. LEGISLATIVE APPROVAL OF PROPOSED COMPACT; PROCEDURE FOR APPROVAL OR DISAPPROVAL. (a) The governor shall submit a proposed compact negotiated under AS 05.18.020 to the legislature within the first 10 days of the next regular session of the legislature for approval.

(b) The legislature shall consider the proposed compact and may either approve or disapprove the compact by law. If the legislature fails to pass a bill approving or disapproving a compact that was submitted during the first 10 days of the regular session of the legislature, the proposed compact is considered approved as of the day after the last day of that legislative session, including any period of extension under art. II, sec. 8, Constitution of the State of Alaska.

(c) When a compact is approved by law or by failure of the legislature to act, the governor may enter into the compact as of the date of approval.

(d) If the legislature disapproves a compact, the legislature shall return the compact to the governor with recommendations for changes, including recommendations for additions or deletions to the compact.

* **Sec. 2.** AS 11.66.280(2) is amended to read:

(2) "gambling" means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that that person or someone else will receive something of value in the event of a certain outcome; "gambling" does not include

(A) bona fide business transactions valid under the law of contracts for the purchase or sale at a future date of securities or commodities and agreements to compensate for loss caused by the happening of chance, including contracts of indemnity or guaranty and life, health, or accident insurance; or

(B) playing an amusement device that

(i) confers only an immediate right of replay not exchangeable for something of value other than the privilege of immediate replay; and

(ii) does not contain a method or device by which the privilege of immediate replay may be cancelled or revoked;

(C) an activity authorized

(i) by the Department of Revenue under AS 05.15;

(ii) under a compact approved under AS 05.18 during the term of that compact;

* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

from the desk of:
Rep. Gail Phillips
Speaker of the House
State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-2689 Fax: (907) 465-3472

Ramona -

Jerry sent this back to me this A.M. regarding Legislative approval of the Compacts.

Please go thru this and let me know your thoughts.

Thanks - Gail

from the desk of:
Rep. Gail Phillips
Speaker of the House
State Capitol
Juneau, AK 99801-1182
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Drue -

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Please go thru this and let me know your comments.

Thanks Gail

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM May 8, 1995

SUBJECT: Legislative Approval of Indian Gaming Compacts
(Work Order No. 9-LS1170\A)

TO: Representative Gail Phillips
Speaker of the House

FROM: Gerald P. Luckhaupt
Legislative Counsel

Enclosed is the bill draft you requested. The bill draft provides the governor with the authority to negotiate a proposed compact under the Indian Gaming Regulatory Act and requires the governor to submit that compact to the legislature for approval. If the legislature fails to approve or disapprove the compact by law by the last day of the regular session at which it was submitted, then the compact is deemed approved and the governor may enter into the compact. If the legislature disapproves the compact it must state its recommendations for changes. This draft generally tracks the proposal provided by the Department of Law.

I remain somewhat concerned about the automatic approval provided in the draft if the legislature fails to act on the proposed compact To alleviate this concern I inserted bill section 2 that exempts from the definition of gambling in our criminal code gaming done pursuant to a compact approved under section 1 of the bill draft. By doing this I believe that we lessen the risk that a court would find that the automatic approval procedure involves an excessive delegation of legislative power. If the only way approvals could occur was by an active act of the legislature, the bill section 2 would not be needed because a similar section could be put in the bill approving the compact. You may also want to consider adding a provision that gives the Department of Revenue the authority to adopt regulations concerning the compact and enforce the regulations and compact. The Department of Law did not request this, but it might be useful if a compact is to be approved by legislative inaction.

GPL:klb
95-340.klb

Enclosure

Revisor's notes. — In 1993, under § 13, ch. 34, SLA 1993 and § 128, ch. 35, SLA 1993 the citation to the Uniform Commercial Code was revised.

NOTES TO DECISIONS

This section does not modify AS 45.01.207, concerning performance or acceptance of performance under reservation of rights, but serves to strengthen the interpretation of that section requiring a creditor seeking to reserve rights in the face of a full payment check to communicate that intent to the debtor before cashing the check to enable the debtor to consider the creditor's position and either agree or stop payment on the check. Air Van Lines v. Buster, 673 P.2d 774 (Alaska 1983).

It is not necessary to tender cash. Ward v. Miller, 13 Alaska 752 (1952).

A check, unobjected to, would constitute a proper tender. Ward v. Miller, 13 Alaska 752 (1952).

Sec. 09.25.095. Effect of private seals and scrolls. Private seals and scrolls as a substitute for seals are abolished. They are not required to an instrument, but when used their effect remains unchanged. (§ 3.10 ch 101 SLA 1962)

Revisor's notes. — Formerly AS 09.25.130. Renumbered in 1994.

Article 2. Public Records.

Section
100. Disposition of tax information
110. Public records open to inspection and copying; fees
115. Electronic services and products
120. Public records; exceptions; certified copies
121. Copies of public records for veterans
122. Litigation disclosure
123. Supervision and regulation
124. Appeals
125. Enforcement; injunctive relief
140. Confidentiality of library records
220. Definitions for AS 09.25.100 — 09.25.220

Sec. 09.25.100. Disposition of tax information. Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, or prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information that may assist in the collection of delinquent taxes. (§ 3.21 ch 101 SLA 1962)

Opinions of attorney general. — The department can publish decisions that have not been appealed or for which confidentiality was not voluntarily waived if it establishes guidelines for publication to protect a taxpayer's identity. June 16, 1983 Op. Att'y Gen.

Determinations of the State Assessment Review Board made under AS 43.56.130 (oil and gas property taxes) are public

Article 6. Abuse of Public Office.

Section
850. Official misconduct
860. Misuse of confidential information

Collateral references. — 63 Am. Jur. 2d, Public Officers and Employees, §§ 346-359.

67 C.J.S., Officers, §§ 120-126, 255-265.

Infamous crime or one involving moral turpitude constituting disqualification to hold public office, 52 ALR2d 1314.

Official oppression, what constitutes offense of, 83 ALR2d 1007.

Personal liability of policeman, sheriff, or similar peace officer or his bond, for injury suffered as a result of failure to enforce law or arrest law breaker, 41 ALR3d 700.

Removal of public officer for misconduct during previous term, 42 ALR3d 691.

Validity and construction of statute authorizing grand jury to submit report concerning public servant's noncriminal misconduct, 63 ALR3d 586.

Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 ALR4th 614.

Sec. 11.56.850. Official misconduct. (a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, the public servant

(1) performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized; or

(2) knowingly refrains from performing a duty which is imposed upon the public servant by law or is clearly inherent in the nature of the public servant's office.

(b) Official misconduct is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Sec. 11.56.860. Misuse of confidential information. (a) A person who is or has been a public servant commits the crime of misuse of confidential information if the person

(1) learns confidential information through employment as a public servant; and

(2) while in office or after leaving office, uses the confidential information for personal gain or in a manner not connected with the performance of official duties other than by giving sworn testimony or evidence in a legal proceeding in conformity with a court order.

(b) As used in this section, "confidential information" means information which has been classified confidential by law.

(c) Misuse of confidential information is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

5-8-95

9-LS1170\F

Rep. Phillips
4 copies to Sen. Pea
+ Atty, General

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE PHILLIPS

Introduced:
Referred:

A BILL

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purpose of this chapter to clarify Alaska law relative to these compacts and to facilitate careful and well-reasoned action in entering into these compacts.

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Sec. 05.18.030. LEGISLATIVE APPROVAL OF PROPOSED COMPACT; PROCEDURE FOR APPROVAL OR DISAPPROVAL. (a) The governor shall submit a proposed compact negotiated under AS 05.18.020 to the legislature within the first 10 days of the next regular session of the legislature for approval.

(b) The legislature shall consider the proposed compact and may either approve or disapprove the compact by law.

(c) When a compact is approved by law, the governor may enter into the compact as of the date of approval.

(d) If the legislature disapproves a compact, the legislature shall return the compact to the governor with recommendations for changes, including recommendations for additions or deletions to the compact.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

Effective date of section:
Act Apr. 28, 1988, P. L. 100-297, Title VI, Part D, § 6303, 102 Stat. 431, which appears as 20 USCS § 2701 note, provides that this section is effective July 1, 1988.

Amendments:
1988. Act Sept. 9, 1988, in para. (4), substituted subpara. (A) for one which read:
"a member of an Indian tribe, band, or other organized group of Indians (as defined by the Indian tribe, band, or other organized group), including those Indian tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside,", in para. (5), in subpara. (A), substituted "Except as provided in subparagraph (B), the" for "The", and substituted "1471(12)" for "198(a)(10" and "2891(12)" for "2854(a)(10)", in supara. (B), in the introductory matter, substituted
"For purposes of the formula grant of subpart 1 (except for sections 5314(b)(2)(B)(ii) and 5315(c)), the term 'local educational agency' includes—" for
"The term 'local educational agency', for purposes of subpart 1 (except for sections 5314(b)(2)(B)(ii) and 5315(c)(2)) includes—",
and, in cl. (ii), substituted "educational" for "education".

Other provisions:
Application of section. For the application of this section, see Act Apr. 28, 1988, P. L. 100-297, Title VI, Part D, § 6303, 102 Stat. 431, which appears as 20 USCS § 2701 note.

CODE OF FEDERAL REGULATIONS

Add:
34 CFR Parts 252, 255, 263.

CHAPTER 29. INDIAN GAMING REGULATION

Section

§ 2701. Findings

The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Federal courts have held that section 2103 of the Revised Statutes (25 U.S.C. 81) requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;

(3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;

(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(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.

(Oct. 17, 1988, P. L. 100-497, § 2, 102 Stat. 2467.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Short title:
Act Oct. 17, 1988, P. L. 100-497, § 1, 102 Stat. 2467, provides: "This Act may be cited as the 'Indian Gaming Regulatory Act'.".

Law Review Articles:
Santoni, The Indian
Rev 387, February,

25 USCS §§ 2701 et seq.
USCS § 1166 to pre-empt
United States v Cook (1991,
Indian Gaming Regulatory
bars federal courts from enjoi
tion of state law through
USCS § 13). United Keetoow
v Oklahoma (1991, CA10 Ok
Indian Gaming Regulator
seq.) does not force states to
regarding Indian gaming and
ment. Cheyenne River Sioux
CA8 SD) 3 F3d 273.
Indian Gaming Regulatory
seq.) survives constitutional
Act regulates gaming on tri
holds virtually unlimited po
exercised its plenary power
establishing tribal-state comp
for regulation against tribal
Red Lake Band of Chippewa
DC Dist Col) 740 F Supp 9.
Contract dispute between n
establishment on reservation
and ordinances established by

§ 2702. Declaration of pc
The purpose of this Act is
(1) to provide a statute
tribal economic develop
(2) to provide a statute
from organized crime
beneficiary of the gamin
the operator and player
(3) to declare that the e
lands, the establishment
National Indian Gamin
and to protect such gan
(Oct. 17, 1988, P. L. 100-4

References in text:
"This Act", referred t
known as the Indian G
full classification of suc

§ 2703. Definitions
For purposes of this Act—
(1) The term "Attorney
(2) The term "Chairman
(3) The term "Commiss
section 5 of this Act [25
(4) The term "Indian lar
(A) all lands within
(B) any lands title to
tribe or individual o
States against alienati
(5) The term "Indian
community of Indians w
(A) is recognized as e
United States to Indi
(B) is recognized as
(6) The term "class I ga
forms of Indian gaming e
or celebrations.

RESEARCH GUIDE

Law Review Articles:

Santoni, The Indian Gaming Regulatory Act: how did we get here? Where are we going? 26 Creighton L Rev 387, February, 1993.

INTERPRETIVE NOTES AND DECISIONS

25 USCS §§ 2701 et seq. do not act together with 18 USCS § 1166 to pre-empt or repeal 18 USCS § 1955. United States v Cook (1991, CA2 NY) 922 F2d 1026.

Indian Gaming Regulatory Act (25 USCS §§ 2701-2721) bars federal courts from enjoining Indian Bingo by application of state law through Assimilative Crimes Act (18 USCS § 13). United Keetoowah Band of Cherokee Indians v Oklahoma (1991, CA10 Okla) 927 F2d 1170.

Indian Gaming Regulatory Act (25 USCS § 2701 et seq.) does not force states to compact with Indian tribes regarding Indian gaming and does not violate tenth amendment. Cheyenne River Sioux Tribe v South Dakota (1993, CA8 SD) 3 F3d 273.

Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) survives constitutional challenge from tribes where Act regulates gaming on tribal land, because Congress holds virtually unlimited power over Indian tribes and exercised its plenary power reasonably in this instance in establishing tribal-state compact process to balance need for regulation against tribal interest in self-government. Red Lake Band of Chippewa Indians v Swimmer (1990, DC Dist Col) 740 F Supp 9.

Contract dispute between non-Indians operating gaming establishment on reservation pursuant to gaming license and ordinances established by tribe will be stayed pending tribal court action, even though federal jurisdiction exists under 25 USCS §§ 81, 2701 et seq. and 28 USCS § 1331, because abstention is appropriate in furtherance of long-standing federal policy of encouraging tribal self-government. Tom's Amusement Co. v Cuthbertson (1993, WD NC) 816 F Supp 403.

For purposes of rule of statutory construction that more specific statute prevails over more general statute when they cannot be reconciled, Rhode Island Indian Claims Settlement Act (25 USCS §§ 1701 et seq.) is general statute, and Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) is specific statute. Rhode Island v Narragansett Tribe of Indians (1993, DC RI) 816 F Supp 796.

Wisconsin licensee violated 18 USCS § 1304 by airing commercials which advertised "Vegas style games" on Sakaogon Indian reservation in Wisconsin, because "Vegas style games" refers to both Class II and III games (whereas "Vegas style excitement" refers only to Class II gaming), and Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.), which permits advertisement of Class II games, only permits advertisement of Class III games if there is tribal-state compact in effect (no such compact was in effect in Wisconsin). Re Liability of WTMJ, Inc., FCC DA93-746 (adopted 6/21/93).

§ 2702. Declaration of policy

The purpose of this Act is—

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

(Oct. 17, 1988, P. L. 100-497, § 3, 102 Stat. 2467.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2703. Definitions

For purposes of this Act—

(1) The term "Attorney General" means the Attorney General of the United States.

(2) The term "Chairman" means the Chairman of the National Indian Gaming Commission.

(3) The term "Commission" means the National Indian Gaming Commission established pursuant to section 5 of this Act [25 USCS § 2704].

(4) The term "Indian lands" means—

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which—

(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and

(B) is recognized as possessing powers of self-government.

(6) The term "class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(7)(A) The term "class II gaming" means—

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that—

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term "class II gaming" does not include—

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on the date of enactment of this Act [enacted Oct. 17, 1988], any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after the date of enactment of this Act [enacted Oct. 17, 1988], to negotiate a Tribal-State compact under section 11(d)(3).

(E) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on the date of enactment of this subparagraph, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 11(d)(3) of the Indian Gaming Regulatory Act (25 U.S.C. 2710(d)(3)).

(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.

(8) The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

(9) The term "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

(10) The term "Secretary" means the Secretary of the Interior.

(Oct. 17, 1988, P. L. 100-497, § 4, 102 Stat. 2467; Dec. 17, 1991, P. L. 102-238, § 2(a), 105 Stat. 1908; Oct. 24, 1992, P. L. 102-497, § 16, 106 Stat. 3261.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

Amendments:

1991. Act Dec. 17, 1991, in para. (7), added subparas. (E) and (F).

1992. Act Oct. 24, 1992, in para. (7)(E), deleted "or Montana" after "Wisconsin".

Other provisions:

Definition of "Class II gaming" as including certain types of gaming legally operated in Minnesota on Indian lands. Act Oct. 23, 1989, P. L. 101-121, Title I, § 118, 103 Stat. 722, provides: "Notwithstanding any other provision of law, the term 'Class II gaming' in Public Law 100-497 [25 USCS §§ 2701 et seq., generally; for full classification consult USCS Tables volumes], for any Indian tribe located in the State of Minnesota, includes, during the period commencing on the date of enactment of this Act and continuing for 365 days from that date, any gaming described in section 4(7)(B)(ii) of Public Law 100-497 [para. (7)(B)(ii) of this section] that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction [jurisdiction] over the lands on which such gaming was operated, requested the State of Minnesota, no later than 30 days after the date of enactment of Public Law 100-497 [enacted Oct. 17, 1988], to negotiate a tribal-state compact pursuant to section 11(d)(3) of Public Law 100-497 [25 USCS § 2710(d)(3)]."

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Class II gaming, defined; Act May 24, 1990, P. L. 101-301, § 6, 104 Stat. 209, provides: "Notwithstanding any other provision of law, the term 'class II gaming' includes, for purposes of applying Public Law 100-497 [amending this section, among other things; for full classification, consult USCS Tables volumes] with respect to any Indian tribe located in the State of Wisconsin or the State of Montana, during the 1-year period beginning on the date of enactment of this Act, any gaming described in section 4(7)(B)(ii) of Public Law 100-497 [para. (7)(B)(ii) of this section] that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated made a request, by no later than November 16, 1988, to the State in which such gaming is operated to negotiate a Tribal-State compact under section 11(d)(3) of Public Law 100-497 [25 USCS § 2710(d)(3)]."

INTERPRETIVE NOTES AND DECISIONS

Where blackjack operation run by tribe existed prior to May 1, 1988, but was subsequently altered to increase number of tables and to expand hours of operation, tribe did not alter nature and scope of its cardgame, and therefore, "grandfather" provision accords class II treatment to tribe's blackjack gaming, and as such, game need not comply with South Dakota law on wager and pot limits. United States v Sisseton-Wahpeton Sioux Tribe (1990, CA8 SD) 897 F2d 358

One year grace period provided by 25 USCS § 2703(7)(D) does not extend to operation of slot machines where such was illegal under both state and federal laws. United States v Cook (1991, CA2 NY) 922 F2d 1026.

"Pick Six" electronic gambling device is not Class II gaming device and is therefore not exempt from requirement of compact between tribe and state. Spokane Indian Tribe v United States (1992, CA9 Wash) 972 F2d 1090, 92 CDOS 6985, 92 Daily Journal DAR 11211.

To qualify as "Indian lands," land must either be within Indian reservation or be trust or restricted land over which Indian tribe exercises governmental power. Cheyenne River Sioux Tribe v South Dakota (1993, CA8 SD) 3 F3d 273.

...tery games offered by Indian tribe are "class III" games lawful only when run in conformance with tribal-state compact, where "Big Green" and "Cash-3" are large-stake games of chance entered from multiple locations throughout reservation, because language, structure, and legislative history of 25 USCS § 2703(7)(A)(i) indicate that such games are not encompassed by word "...tto" in "class II" definition intended to include only traditional bingo and bingo-type games. Oneida Tribe of Indians v Wisconsin (1990, WD Wis) 742 F Supp 1033.

Challenge to National Indian Gaming Commission's determination that keno is Class III gaming that tribes may only offer pursuant to tribal-state compact must fail, despite similarities in basic nature and play of keno and Class II bingo, as well as historical linkage between games, because Commission's determination that Congress saw keno as "casino" game and intended to place casino games in Class III is permissible construction of 25 USCS §§ 2703(7) and (8). Shakopee Mdewakanton Sioux Community v Hope (1992, DC Minn) 798 F Supp 1399.

For purposes of 25 USCS §§ 2703(4) and 2710(d)(3)(A), Narragansett Tribe "exercises governmental power" and possesses "jurisdiction" over settlement lands in Charlestown, Rhode Island; therefore, Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) is applicable to settlement lands. Rhode Island v Narragansett Tribe of Indians (1993, DC RI) 816 F Supp 796.

Indian bands' arguments for inclusion of video pull-tab games as class II gaming under Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) must fail, where games use computerized opportunities in finite group or "deal" comprised of pre-determined mix of winning and losing opportunities which, when purchased by player, are displayed and its symbols revealed on video screen, because such games are precisely sort of "electronic facsimiles" Congress specifically excluded from class II gaming under § 2703(7)(B)(ii). Cabazon Band of Mission Indians v National Indian Gaming Comm'n (1993, DC Dist Col) 827 F Supp 26, motion den (DC Dist Col) 1993 US Dist LEXIS 9344.

§ 2704. National Indian Gaming Commission

(a) There is established within the Department of the Interior a Commission to be known as the National Indian Gaming Commission.

(b)(1) The Commission shall be composed of three full-time members who shall be appointed as follows:

(A) a Chairman, who shall be appointed by the President with the advice and consent of the Senate; and

(B) two associate members who shall be appointed by the Secretary of the Interior.

(2)(A) The Attorney General shall conduct a background The Attorney General shall conduct a background investigation on any person considered for appointment to the Commission.

(B) The Secretary shall publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and shall allow a period of not less than thirty days for receipt of public comment.

(3) Not more than two members of the Commission shall be of the same political party. At least two members of the Commission shall be enrolled members of any Indian tribe.

(4)(A) Except as provided in subparagraph (B), the term of office of the members of the Commission shall be three years.

(B) Of the initial members of the Commission—

(i) two members, including the Chairman, shall have a term of office of three years; and

(ii) one member shall have a term of office of one year.

(5) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who—

(A) has been convicted of a felony or gaming offense;

(B) has any financial interest in, or management responsibility for, any gaming activity; or

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 12 of this Act [25 USCS § 2711].

(6) A Commissioner may only be removed from office before the expiration of the term of office of the member by the President (or, in the case of associate member, by the Secretary) for neglect of duty, or malfeasance in office, or for other good cause shown.

(c) Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term of office until his successor has been appointed, unless the member has been removed for cause under subsection (b)(6).

(d) Two members of the Commission, at least one of which is the Chairman or Vice Chairman, shall constitute a quorum.

(e) The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairman. The Vice Chairman shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

(f) The Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least once every 4 months.

(g)(1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(2) The associate members of the Commission shall each be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5, United States Code.

(3) All members of the Commission shall be reimbursed in accordance with title 5, United States Code, for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(Oct. 17, 1988, P. L. 100-497, § 5, 102 Stat. 2469.)

§ 2705. Powers of the Chairman

(a) The Chairman, on behalf of the Commission, shall have power, subject to an appeal to the Commission, to—

(1) issue orders of temporary closure of gaming activities as provided in section 14(b) [25 USCS § 2713(b)];

(2) levy and collect civil fines as provided in section 14(a) [25 USCS § 2713(a)];

(3) approve tribal ordinances or resolutions regulating class II gaming and class III gaming as provided in section 11 [25 USCS § 2710]; and

(4) approve management contracts for class II gaming and class III gaming as provided in sections 11(d)(9) and 12 [25 USCS §§ 2710(d)(9), 2711].

(b) The Chairman shall have such other powers as may be delegated by the Commission.

(Oct. 17, 1988, P. L. 100-497, § 6, 102 Stat. 2470.)

§ 2706. Powers of the Commission

(a) The Commission shall have the power, not subject to delegation—

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 18 [25 USCS § 2717];

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 14(a) [25 USCS § 2713(a)];

(3) by an affirmative vote of not less than 2 members, to establish the rate of fees as provided in section 18 [25 USCS § 2717];

(4) by an affirmative vote of not less than 2 members, to authorize the Chairman to issue subpoenas as provided in section 16 [25 USCS § 2715]; and

(5) by an affirmative vote of not less than 2 members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 14(b)(2) [25 USCS § 2713(b)(2)].

(b) The Commission—

(1) shall monitor class II gaming conducted on Indian lands on a continuing basis;

(2) shall inspect and examine all premises located on Indian lands on which class II gaming is conducted;

(3) shall conduct or cause to be conducted such background investigations as may be necessary;

(4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this Act;

(5) may use the United States mail in the same manner and under the same conditions as any department or agency of the United States;

(6) may procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) may enter into contracts with Federal, State, tribal and private entities for activities necessary to the discharge of the duties of the Commission and, to the extent feasible, contract the enforcement of the Commission's regulations with the Indian tribes;

(8) may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) may administer oaths or affirmations to witnesses appearing before the Commission; and

(10) shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this Act.

(c) The Commission shall submit a report with minority views, if any, to the Congress on December 31, 1989, and every two years thereafter. The report shall include information on—

(1) whether the associate commissioners should continue as full or part-time officials;

(2) funding, including income and expenses, of the Commission;

(3) recommendations for amendments to the Act; and

(4) any other matter considered appropriate by the Commission.

(Oct. 17, 1988, P. L. 100-497, § 7, 102 Stat. 2470.)

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HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:
"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2707. Commission staffing

(a) The Chairman shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(b) The Chairman shall appoint and supervise other staff of the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title [5 USCS §§ 5101 et seq., 5331 et seq.] relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-17 of the General Schedule under section 5332 of that title.

(c) The Chairman may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(d) Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act, unless otherwise prohibited by law.

(e) The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(Oct. 17, 1988, P. L. 100-497, § 8, 102 Stat. 2471.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:
"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2708. Commission; access to information

The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this Act. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

(Oct. 17, 1988, P. L. 100-497, § 9, 102 Stat. 2472.)

§ 2709. Interim authority to regulate gaming

Notwithstanding any other provision of this Act, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before the date of enactment of this Act [enacted Oct. 17, 1988] relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.

(Oct. 17, 1988, P. L. 100-497, § 10, 102 Stat. 2472.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:
"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2710. Tribal gaming ordinances

(a)(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act.

(b)(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that—

(A) except as provided in paragraph (1), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than—

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;
(iii) to promote tribal economic development;
(iv) to donate to charitable organizations; or
(v) to help fund operations of local government agencies;

(C) 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;

(D) 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;

(E) 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

(F) there is an adequate system which—

(i) 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; and

(ii) includes—

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if—

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 13 of the Act [25 USCS § 2712],

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 18(a)(1) [25 USCS § 2717(a)(1)] for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on the date of enactment of this Act [enacted Oct. 17, 1988].

(iii) Within sixty days of the date of enactment of this Act [enacted Oct. 17, 1988], the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c)(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II), the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which—

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after the date of the enactment of this Act [enacted Oct. 17, 1988]; and

(B) has otherwise complied with the provisions of this section may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has—

(A) conducted its gaming activity in a manner which—

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for—

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation—

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 7(b) [25 USCS § 2706(b)(1)-(4)];

(B) the tribe shall continue to submit an annual independent audit as required by section 11(b)(2)(C) [25 USCS § 27[illegible]](b)(2)(C)] and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 18 [25 USCS § 2717] in excess of one quarter of 1 per centum of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d)(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b), and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b).

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that—

(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or.

(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 12(e)(1)(D) [25 USCS § 2711(e)(1)(D)].

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection—

(I) any person or entity operating a class III gaming activity pursuant to this paragraph on

the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to—

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 5 of the Act of January 2, 1951 (64 Stat. 1135) [15 USCS § 1175] shall not apply to any gaming conducted under a Tribal-State compact that—

(A) is entered into under paragraph (3) by a State in which gambling devices are legal, and

(B) is in effect.

(7)(A) The United States district courts shall have jurisdiction over—

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that—

(I) a Tribal-State compact has not been entered into under paragraph (3), and

(II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,

the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court—

(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

(i) that revokes authorization Register may, during the ordinance or resolution is nformance with the Tribal- and mitted before, the close of ance or resolution.

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(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this Act and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this Act, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(8)(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates—

(i) any provision of this Act,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this Act.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 12 [25 USCS § 2711(b)-(d), (f)-(h)].

(e) For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this Act.

(Oct. 17, 1988, P. L. 100-497, § 11, 102 Stat. 2472.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

INTERPRETIVE NOTES AND DECISIONS

Adoption by tribe of tribal ordinance authorizing conduct of class III gaming on reservation is not precondition to state's obligation to negotiate tribal-state compact regarding class III gaming, and therefore state is required to negotiate with tribe upon request. Mashantucket Pequot Tribe v Connecticut (1990, CA2 Conn) 913 F2d 1024.

Since 25 USCS § 2710(d)(6) expressly provides for continuing application of 15 USCS § 1175, with certain exceptions, it cannot be said that 25 USCS §§ 2701 et seq. preempts or repeals 15 USCS § 1175. United States v Cook (1991, CA2 NY) 922 F2d 1026.

Term "lotto" as used within Indian Gaming Regulatory Act (25 USCS §§ 2701-2721) means bingo-like game and does not include lottery games which are Class III gaming activities which state may regulate or prohibit. Oneida Tribe of Indians v Wisconsin (1991, CA7 Wis) 951 F2d 757.

"Such gaming" language of 25 USCS § 2710(d)(1)(B) does not require state to negotiate with respect to forms of gaming it does not presently permit, and because video keno and traditional keno are not same, state where video keno was permissible but where traditional keno was illegal did not refuse to negotiate in good faith where it would not allow traditional keno as part of tribal-state gaming compact; additionally, other language in statute expressly providing for federal jurisdiction over claims under Act is sufficient to abrogate states' eleventh amendment immunity. Cheyenne River Sioux Tribe v South Dakota (1993, CA8 SD) 3 F3d 273.

Indian Gaming Regulatory Act (25 USCS §§ 2701-2721) does not operate to waive provision of Johnson Act (15 USCS § 1175) prohibiting possession or use of video lottery terminals on tribal land in Oklahoma since Oklahoma is not state in which such gambling devices are legal. Citizen Band Potawatomi Indian Tribe v Green (1993, CA10 Okla) 995 F2d 179.

Indian tribe's blackjack gaming operation is improper under 25 USCS § 2710(b)(1)(A), where bet limits were as high as $100 and state bet limit is $5, because same operation could not be conducted by any other person in state. Sisseton-Wahpeton Sioux Tribe v United States Dept. of Justice (1989, DC SD) 718 F Supp 755.

State must negotiate with tribe for purpose of formulating tribal-state compact concerning terms of operation of games of chance, despite state's argument that tribe must pass tribal ordinance first, because 25 USCS § 2710(d)(1) sets forth 3 preconditions for class III gaming to be lawful on Indian lands but does not articulate any time sequence, making state obligated to enter compact negotiations upon mere request by tribe. Mashantucket Pequot Tribe v Connecticut DC Conn) (1990, DC Conn) 737 F Supp 169.

State is required to negotiate with Indians over inclusion in tribal-state compact of any activity that includes elements of prize, chance, and consideration and that is not prohibited expressly by state constitution or law, where state is adamantly refusing Indians any right to operate slot machines, video, and casino games even though it permits state-operated lottery and parimutuel on-track betting, because state's position is inconsistent with requirement that it negotiate "in good faith" under 25 USCS § 2710(d). Lac Du Flambeau Band of Lake Superior Chippewa Indians v Wisconsin (1991, WD Wis) 770 F Supp 480.

Indian bank's action to compel negotiations and completion of Tribal-State compact to govern gaming activities on its land is dismissed, even though 25 USCS § 2710(d)(7)(A)(i) clearly authorizes tribal claim against state in federal court, because Congress does not have power to abrogate State's Eleventh Amendment immunity when enacting legislation pursuant to Indian Commerce Clause. Poarch Band of Creek Indians v Alabama (1991, SD Ala) 776 F Supp 550, later proceeding (SD Ala) 1992 US Dist LEXIS 1781.

State, but not individual officials of state gambling commission, is dismissed from suit on grounds of sovereign immunity, where Indian tribe seeks mandate ordering officials to negotiate in good faith to achieve tribal/state compact governing conduct of certain gaming activities on Indian lands in state under 25 USCS § 2710, because tribe is seeking to require state officials to comply with federal statute by method that would not require unwarranted judicial interference into executive discretion. Spokane Tribe of Indians v Washington (1991, ED Wash) 790 F Supp 1057.

Federal district court is without jurisdiction to order governor to negotiate compact with Indian tribe with respect to gaming activities on tribal land, where to order governor and tribe to conclude tribal-state compact, as provided by 25 USCS § 2710(d)(7)(B)(iii), would clearly be to order governor to exercise discretion, because federal court may not control discretion of state officer but may only order her to perform ministerial duties. Poarch Band of Creek Indians v Alabama (1992, SD Ala) 784 F Supp 1549.

State may collect license fees for simulcast horse racing from betting facilities located on Indian reservations, where state imposes uniform tax on all racing associations and fees generated are much greater than state's actual costs in monitoring wagering facilities, because although 25 USCS § 2710(d)(3)(C)(iii) prohibits direct state taxes on Indian gaming activities beyond extent necessary to cover cost of regulating gaming, act does not prohibit indirect state taxation caused by taxing non-Indian entities who contract with Indian tribes. Cabazon Band of Mission Indians v California (1992, ED Cal) 788 F Supp 1513.

Class III gaming will be conducted on tribal lands but court will not decide whether casino and video gaming must be included, where tribe and state have reached impasse in negotiations, because straightforward procedure supplied by 25 USCS § 2710(d) calls for mediation, followed by conduct of gaming under tribal and federal regulation if state cannot accept mediator-selected compact. Yavapai-Prescott Indian Tribe v Arizona (1992, DC Ariz) 796 F Supp 1292.

Indian tribes' claims against state are dismissed under Eleventh Amendment, but jurisdiction will be retained to consider amendment to name state officials as defendants, where tribes allege state has not negotiated in good faith toward reaching tribal-state gaming compact under Indian Gaming Regulatory Act (IGRA) (25 USCS §§ 2701 et seq.), because there is no implicit waiver of sovereign immunity in plan of IGRA, and IGRA jurisdictional provision at § 2710(d)(7)(B)(ii) is not clear Congressional usurpation of immunity given uncertainty of Congress's power to do so under Indian commerce clause. Saul Ste. Marie Tribe of Chippewa Indians v Michigan (1992, WD Mich) 800 F Supp 1484.

Indian tribe's court challenge to state's failure to conduct good-faith negotiations regarding certain gaming activities to be conducted on tribe's land will not be dismissed, because 25 USCS § 2710(d)(7)(A)(i), on its face, abrogates states' Eleventh Amendment immunity to this type of action, and Congress's power to abrogate is clear based on its paramount and plenary authority over Indian affairs. Seminole Tribe of Florida v State (1992, SD Fla) 801 F Supp 655.

Partnership is denied injunction preventing tribe from taking action to seize or assume control of bingo hall on reservation, even though tribal agency's mass denial under 25 USCS § 2710 of partnership employees' applications for licenses to work in bingo hall is found to be arbitrary and capricious, because tribal court has ordered arbitration of this dispute between tribe and partnership it agreed to let manage bingo hall, and nothing in Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) gives court power to protect non-Indian parties who choose to invest in Indian gaming. Tamiami Partners, Ltd. v Miccosukee Tribe of Indians (1992, SD Fla) 803 F Supp 401.

City officials are enjoined preliminarily from interfering with casino gambling operation as permitted under tribal-state compact and 25 USCS § 2710, where compact clearly permits such gambling but parties dispute effect of tribal-city agreements purporting to make operation comply with local law and regulations that do not allow such gambling, because tribe has better than negligible likelihood of success on merits, and public interest favors continuation of casino video gaming, which supports basic community services and access to education for poverty-stricken tribal members. Forest County Potawatomi Community v Doyle (1992, WD Wis) 803 F Supp 1526.

Indian tribe shall make no further per capita payments of casino profits until there is approved plan in existence for such distributions, and in meantime profits should be deposited with clerk of court, where tribe has been making payments only to persons living in county—in violation of Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.), because tribal members living outside county are being harmed by operation of tribe's current distribution of profits which violates 25 USCS § 2710(b)(3). Ross v Flandreau Santee Sioux Tribe (1992, DC SD) 809 F Supp 738.

State is required to enter into good-faith negotiations with Indian tribe for purposes of forming Class III Tribal-State compact pursuant to 25 USCS § 2710(d)(3), where Gaming Act (25 USCS §§ 2701-2721 and 18 USCS §§ 1166-1168) preempts earlier federal laws giving states jurisdiction over Indian lands, and where tribe exercises governmental power and has jurisdiction over its land, because Gaming Act therefore applies to tribe's settlement land and permits states to assert jurisdiction over Class III gaming only through Tribal-State compact process. Rhode Island v Narragansett Tribe of Indians (1993, DC RI) 816 F Supp 796.

For purposes of 25 USCS §§ 2703(4) and 2710(d)(3)(A), Narragansett Tribe "exercises governmental power" and possesses "jurisdiction" over settlement lands in Charlestown, Rhode Island; therefore, Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) is applicable to settlement lands. Rhode Island v Narragansett Tribe of Indians (1993, DC RI) 816 F Supp 796.

State is denied dismissal of Indian tribe's action to force state to enter into good-faith negotiations regarding tribal-state compact to cover certain gaming activities, because Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) abrogates states' Eleventh Amendment immunity, and Congress's power to regulate Indian commerce includes power to abrogate states' immunity. Kickapoo Tribe of Indians v Kansas (1993, DC Kan) 818 F Supp 1423, motion den (DC Kan) 1993 US Dist LEXIS 8148.

State's failure to reopen negotiations for establishment of gaming on Indian lands did not give tribe claim under 25 USCS § 2710, where state and tribe concluded compact giving tribe right to conduct gaming at 3 sites but not at fourth site desired by tribe, and when state failed to reopen negotiations, tribe brought action seeking to compel state to conclude compact on fourth site, because original compact appeared to be final, and tribe could have brought action before concluding compact if state was not negotiating in good faith. Wisconsin Winnebago Nation v Thompson (1993, WD Wis) 824 F Supp 167.

Tribal-State compact covering class III gaming on Indian lands cannot be put into effect, even though properly submitted compact was not acted upon by Interior Secretary within 45 days and should be deemed approved under

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injunction preventing tribe from
assume control of bingo hall on
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othing in Indian Gaming Regula-
701 et seq.) gives court power to
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ers, Ltd. v. Miccosukee Tribe of
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CS § 2710, where compact clearly
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en negotiations for establishment
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duct gaming at 3 sites but not at
e, and when state failed to reopen
ht action seeking to compel state
fourth site, because original com-
al, and tribe could have brought
compact if state was not negotiat-
sin Winnebago Nation v Thomp-
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covering class III gaming on In-
into effect, even though properly
not acted upon by Interior Secre-
should be deemed approved under

25 USCS § 2710(d)(8)(C), because compact is void since state supreme court ruled that governor did not have power to sign compact. Kickapoo Tribe of Indians v Babbitt (1993, DC Dist Col) 827 F Supp 37.

Indian tribe is enjoined from continuing per capita distribution plan for gambling revenues which excludes some enrolled members of tribe, where excluded members claim that exclusion violates Indian Civil Rights Act, 25 USCS § 1302(8), and tribal consititution, plan was not approved by Bureau of Indian Affairs, as required by 25 USCS § 2710(b), and gambling revenues are substantial, but tribe maintains no funds to pay judgments, and continued revenues are not guaranteed, because excluded members have shown likelihood of success on merits, and may suffer substantial harm if distribution is continued. Maxam v Lower Sioux Indian Community (1993, DC Minn) 829 F Supp 277.

§ 2711. Management contracts

(a)(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 11(b)(1) [25 USCS § 2710(b)(1)], but, before approving such contract, the Chairman shall require and obtain the following information:

(A) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

(C) a complete financial statement of each person listed pursuant to subparagraph (A).

(2) Any person listed pursuant to paragraph (1)(A) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(3) For purposes of this Act, any reference to the management contract described in paragraph (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(b) The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least—

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years, except that, upon the request of an Indian tribe, the Chairman may authorize a contract term that exceeds five years but does not exceed seven years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time; and

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

(c)(1) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if the Chairman determines that such percentage fee is reasonable in light of surrounding circumstances. Except as otherwise provided in this subsection, such fee shall not exceed 30 percent of the net revenues.

(2) Upon the request of an Indian tribe, the Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the Chairman is satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee requested by the Indian tribe.

(d) By no later than the date that is 180 days after the date on which a management contract is submitted to the Chairman for approval, the Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the 180-day period by not more than 90 days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection.

(e) The Chairman shall not approve any contract if the Chairman determines that—

(1) any person listed pursuant to subsection (a)(1)(A) of this section—

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this Act or has refused to respond to questions propounded pursuant to subsection (a)(2); or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

(f) The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.

(g) No management contract for the operation and management of a gaming activity regulated by this Act shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.

(h) The authority of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81), relating to management contracts regulated pursuant to this Act, is hereby transferred to the Commission.

(i) The Commission shall require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in subsection (e) of this section.

(Oct. 17, 1988, P. L. 100-497, § 12, 102 Stat. 2479.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2712. Review of existing ordinances and contracts

(a) As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to the enactment of this Act [enacted Oct. 17, 1988], adopted an ordinance or resolution authorizing class II gaming or class III gaming or entered into a management contract, that such ordinance, resolution, or contract, including all collateral agreements relating to the gaming activity, must be submitted for his review within 60 days of such notification. Any activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this Act, or any amendment made by this Act, unless disapproved under this section.

(b)(1) By no later than the date that is 90 days after the date on which an ordinance or resolution authorizing class II gaming or class III gaming is submitted to the Chairman pursuant to subsection (a), the Chairman shall review such ordinance or resolution to determine if it conforms to the requirements of section 11(b) of this Act [25 USCS § 2710(b)].

(2) If the Chairman determines that an ordinance or resolution submitted under subsection (a) conforms to the requirements of section 11(b) [25 USCS § 2710(b)], the Chairman shall approve it.

(3) If the Chairman determines that an ordinance or resolution submitted under subsection (a) does not conform to the requirements of section 11(b) [25 USCS § 2710(b)], the Chairman shall provide written notification of necessary modifications to the Indian tribe which shall have not more than 120 days to bring such ordinance or resolution into compliance.

(c)(1) Within 180 days after the submission of a management contract, including all collateral agreements, pursuant to subsection (a), the Chairman shall subject such contract to the requirements and process of section 12 [25 USCS § 2711].

(2) If the Chairman determines that a management contract submitted under subsection (a), and the management contractor under such contract, meet the requirements of section 12 [25 USCS § 2711], the Chairman shall approve the management contract.

(3) If the Chairman determines that a contract submitted under subsection (a), or the management contractor under a contract submitted under subsection (a), does not meet the requirements of section 12 [25 USCS § 2711], the Chairman shall provide written notification to the parties to such contract of necessary modifications and the parties shall have not more than 120 days to come into compliance. If a management contract has been approved by the Secretary prior to the date of enactment of this Act [enacted Oct. 17, 1988], the parties shall have not more than 180 days after notification of necessary modifications to come into compliance.

(Oct. 17, 1988, P. L. 100-497, § 13, 102 Stat. 2481.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2713. Civil penalties

(a)(1) Subject to such regulations as may be prescribe Subject to such regulations as may be prescribed by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this Act, any regulation prescribed by the Commission pursuant to this Act, or tribal regulations, ordinances, or resolutions approved under section 11 or 13 [25 USCS § 2710 or 2712].

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(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

(3) Whenever the Commission has reason to believe that the tribal operator of an Indian game or a management contractor is engaged in activities regulated by this Act, by regulations prescribed under this Act, or by tribal regulations, ordinances, or resolutions, approved under section 11 or 13 [25 USCS § 2710 or 2712], that may result in the imposition of a fine under subsection (a)(1), the permanent closure of such game, or the modification or termination of any management contract, the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in common and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

(b)(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this Act, of regulations prescribed by the Commission pursuant to this Act, or of tribal regulations, ordinances, or resolutions approved under section 11 or 13 of this Act [25 USCS § 2710 or 2712].

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing, the Commission shall, by a vote of not less than two of its members, decide whether to order a permanent closure of the gaming operation.

(c) A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to chapter 7 of title 5, United States Code [5 USCS §§ 701 et seq.].

(d) Nothing in this Act precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is not inconsistent with this Act or with any rules or regulations adopted by the Commission.

(Oct. 17, 1988, P. L. 100-497, § 14, 102 Stat. 2482.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2714. Judicial review

Decisions made by the Commission pursuant to sections 11, 12, 13, and 14 [25 USCS §§ 2710-2713] shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of title 5, United States Code [5 USCS §§ 701 et seq.].

(Oct. 17, 1988, P. L. 100-497, § 15, 102 Stat. 2483.)

§ 2715. Subpoena and deposition authority

(a) By a vote of not less than two members, the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

(c) Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena for any reason, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents as so ordered) and give evidence concerning the matter in question and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

(e) Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Commission.

(f) Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(Oct. 17, 1988, P. L. 100-497, § 16, 102 Stat. 2483.)

§ 2716. Investigative powers

(a) Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5, United States Code.

(b) The Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.

(c) The Attorney General shall investigate activities associated with gaming authorized by this Act which may be a violation of Federal law.

(Oct. 17, 1988, P. L. 100-497, § 17, 102 Stat. 2484.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2717. Commission funding

(a)(1) The Commission shall establish a schedule of fees to be paid to the Commission annually by each class II gaming activity that is regulated by this Act.

(2)(A) The rate of the fees imposed under the schedule established under paragraph (1) shall be—

(i) no less than 0.5 percent nor more than 2.5 percent of the first $1,500,000, and

(ii) no more than 5 percent of amounts in excess of the first $1,500,000, of the gross revenues from each activity regulated by this Act.

(B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed $1,500,000.

(3) The Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.

(4) Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to the regulations of the Commission, be grounds for revocation of the approval of the Chairman of any license, ordinance, or resolution required under this Act for the operation of gaming.

(5) To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity on a pro rata basis against such fees imposed for the succeeding year.

(6) For purposes of this section, gross revenues shall constitute the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal year of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 19 [25 USCS § 2718], in an amount equal the amount of funds derived from assessments authorized by subsection (a) for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations pursuant to paragraph (2) shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

(Oct. 17, 1988, P. L. 100-497, § 18, 102 Stat. 2484.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2717a. Availability of fees for Commission expenditures

In fiscal year 1990 and thereafter, fees collected pursuant to and as limited by section 18 of the Act [25 USCS § 2717] shall be available to carry out the duties of the Commission, to remain available until expended.

(Oct. 23, 1989, P. L. 101-121, Title I, 103 Stat. 718.)

§ 2718. Authorization of appropriations

(a) Subject to the provisions of section 18 [25 USCS § 2717], there are hereby authorized to be appropriated such sums as may be necessary for the operation of the Commission.

(b) Notwithstanding the provisions of section 18 [25 USCS § 2717], there are hereby authorized to be appropriated not to exceed $2,000,000 to fund the operation of the Commission for each of the fiscal years beginning October 1, 1988, and October 1, 1989. Notwithstanding the provisions of section 18 [25 USCS § 2717], there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992.

(Oct. 17, 1988, P. L. 100-497, § 19, 102 Stat. 2485; Dec. 17, 1991, P. L. 102-238, § 2(b), 105 Stat. 1908.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1991. Act Dec. 17, 1991, in subsec. (b), added the sentence beginning "Notwithstanding the provisions of section 18, there are authorized to be appropriated . . .".

§ 2719. Gaming on lands acquired after October 17, 1988

(a) Except as provided in subsection (b), gaming regulated by this Act shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after the date of enactment of this Act [enacted Oct. 17, 1988] unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on the date of enactment of this Act [enacted Oct. 17, 1988]; or

(2) the Indian tribe has no reservation on the date of enactment of this Act [enacted Oct. 17, 1988] and—

(A) such lands are located in Oklahoma and—

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b)(1) Subsection (a) will not apply when—

(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of—

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) shall not apply to—

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 5 and 7 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465, 467), subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d)(1) The provisions of the Internal Revenue Code of 1986 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such Code [26 USCS §§ 1441, 3402(q), 6041, 6050I, 4401 et seq.]) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this Act, or under a Tribal-State compact entered into under section 11(d)(3) [25 USCS § 2710(d)(3)] that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after the date of enactment of this Act [enacted Oct. 17, 1988] unless such other provision of law specifically cites this subsection.

(Oct. 17, 1988, P. L. 100-497, § 20, 102 Stat. 2485.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2720. Dissemination of information

Consistent with the requirements of this Act, sections 1301, 1302, 1303 and 1304 of title 18, United States Code, shall not apply to any gaming conducted by an Indian tribe pursuant to this Act.

(Oct. 17, 1988, P. L. 100-497, § 21, 102 Stat. 2486.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2721. Severability

In the event that any section or provision of this Act, or amendment made by this Act, is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act, and amendments made by this Act, shall continue in full force and effect.

(Oct. 17, 1988, P. L. 100-497, § 22, 102 Stat. 2486.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

CHAPTER 30. INDIAN LAW ENFORCEMENT REFORM

Section

§ 2801. Definitions

For purposes of this Act—

(1) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(2) The term "employee of the Bureau" includes an officer of the Bureau.

(3) The term "enforcement of a law" includes the prevention, detection, and investigation of an offense and the detention or confinement of an offender.

(4) The term "Indian country" has the meaning given that term in section 1151 of title 18, United States Code.

(5) The term "Indian tribe" has the meaning given that term in section 201 of the Act of April 11, 1968 (82 Stat. 77; 25 U.S.C. 1301).

(6) The term "offense" means an offense against the United States and includes a violation of a Federal regulation relating to part or all of Indian country.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "Division of Law Enforcement Services" means the entity established within the Bureau under section 3(b) [25 USCS § 2802(b)].

(9) The term "Branch of Criminal Investigations" means the entity the Secretary is required to establish within the Division of Law Enforcement Services under section 3(d)(1) [25 USCS § 2802(d)(1)].

(Aug. 18, 1990, P. L. 101-379, § 2, 104 Stat. 473.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Aug. 18, 1990, P. L. 101-379, 104 Stat. 473, which appears generally as 25 USCS §§ 2801 et seq. and as 42 USCS § 2991a note. For full classification of this Act, consult USCS Tables volumes.

Short title:

Act Aug. 18, 1990, P. L. 101-379, § 1, 104 Stat. 473, provides: "This Act may be cited as the 'Indian Law Enforcement Reform Act'.".

For full classification of this Act, consult USCS Tables volumes.

§ 2802. Indian law enforcement responsibilities

(a) The Secretary, acting through the Bureau, shall be responsible for providing, or for assisting in the provision of, law enforcement services in Indian country as provided in this Act.

(b) There is hereby established within the Bureau a Division of Law Enforcement Services which, under the supervision of the Secretary, or an individual designated by the Secretary, shall be responsible for—

(1) carrying out the law enforcement functions of the Secretary in Indian country, and

(2) implementing the provisions of this section.

(c) Subject to the provisions of this Act and other applicable Federal or tribal laws, the responsibilities of the Division of Law Enforcement Services in Indian country shall include—

(1) the enforcement of Federal law and, with the consent of the Indian tribe, tribal law;

STATE

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 28, 1995

The Honorable Drue Pearce
President of the Alaska State Senate
Room 111
State Capitol
Juneau, Alaska 99811

Dear Senator Pearce:

You have asked for a legal opinion concerning the implications to Native groups[1] seeking to conduct Class III gaming if the legislature enacts legislation to permit gaming on cruise ships in state waters. Enactment of legislation to permit gaming on cruise ships will affect the types of games that would be available for authorized Native groups to put into play under a Tribal/state compact. Present law permits card games, dice, and certain types of "wheel games," which the State must allow as subjects of negotiation of a Tribal/state compact to govern Native gaming operations. If slot machines and video games of chance are permitted to cruise ships, these forms of gaming will also become available to eligible Native groups.[2] Our analysis follows.

By way of background, the Indian Gaming Regulatory Act (IGRA)[3] provides that Indian tribes may operate Class III gaming on Indian land. IGRA defines "Indian tribe" as any organized group of Indians which is recognized as eligible for programs and services offered by the United States to Indians because of their status as Indians, and which is recognized as having powers of self-government. The Solicitor of the Department of the Interior largely recognizes that most all Alaska Native groups fall within IGRA's definition. *See*, Governmental Jurisdiction of Alaska

1. Your request asks for the implications as they regard Native *corporations*. Native corporations, however, usually understood to refer to those created under the Alaska Native Claims Settlement Act, are not authorized to conduct gaming.

2. This is true even though slot machines and video games of chance would remain illegal except for cruise ship use. Attachment A to this letter is an analysis of state law leading to the conclusion that these games are illegal in Alaska.

3. 25 U.S.C. § 2701 *et seq.*, P.L. 100-497 (Oct. 1988).

Native Villages Over Land and Nonmembers, Memorandum of Solicitor, U.S. Dep't of the Interior, M-26975, Jan. 11, 1993.

The definition of "Indian land," we believe, limits the number of groups that might be eligible to engage in gaming operations in Alaska. Under IGRA, "Indian land" is limited to land that is held in trust by the United States government for the benefit of an Indian tribe, or land that is subject to restriction by the federal government against alienation *and* over which the tribe exercises governmental control. "Indian land" also includes lands within the limits of an Indian reservation. 25 U.S.C. § 2703(4).

The Solicitor's Office of the Department of the Interior has opined that only four places in Alaska qualify under IGRA definitions to conduct Indian gaming. There are small parcels -- roughly three acres each -- in Kake, Angoon, and Klawock that are trust lands, and the Metlakatla Indian Community within the Annette Island Reserve. Of those groups presently recognized as eligible, only Klawock, through the Klawock Cooperative Association (KCA), has approached the State to negotiate a compact.[4]

IGRA provides that the state must negotiate the subject of what games tribes will be permitted to operate; eligible Class III gaming must include those games permitted to be played "for any purpose by any person, organization or entity[.]" 25 U.S.C. § 2710(d)(1)(B). This provision has been interpreted to mean that tribes must be allowed to operate any games allowed to others in a state, no matter in what form or under what limitations. The leading case on this question is *Mashantucket Pequot Tribe v. State of Connecticut*, 913 F.2d 1024 (2d Cir. 1990), *cert. denied*, __ U.S. __, 111 S. Ct. 1620 (1991).

In *Mashantucket Pequot* the court based its decision in large part on the fact that Connecticut allowed "Las Vegas nights," in which various games of chance may be played, although under a high degree of regulation. These events parallel "Monte Carlo nights" permitted under Alaska law. Connecticut law provided that any non-profit organization could operate games of chance to raise funds subject to certain conditions. These included limits on the size of wagers, character of prizes, and the frequency of operations. Under Alaska law, only qualified organizations may operate "Monte Carlo nights;" they may not be operated using money or substitutes redeemable for money; the value of prizes is limited; and an organization may only operate three one-day events or one three-day event in a given year. AS 05.15.100 and AS 05.15.180.

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4. IGRA mandates that states enter into negotiations with recognized Indian groups whenever a group requests negotiation of a Tribal/state compact to govern gaming on Indian land. 25 U.S.C. § 2710(d)(3)(A).

It is clear, then, that under present Alaska law, the state must negotiate with an eligible tribe over card games, dice games, and legal "wheel games."[5] These games are permitted to any eligible organization conducting a "Monte Carlo night" function. It is equally clear that slot machines and video games of chance are illegal under Alaska criminal law and, therefore, are not open to inclusion within the range of games that an Indian group might operate under an IGRA compact. Applying the principles of *Mashantucket Pequot* and a variety of cases which followed it, an Indian group in Alaska seeking to operate slot machines and/or video games of chance would have to be able to point to these games being afforded to another entity free from criminal law constraints.

It has been argued that if state law permits *any* type of Class III gaming, then it must negotiate with an Indian tribe over *all* types of Class III games. This argument was raised and rejected in *Cheyenne River Sioux Tribe v. State of South Dakota*, 3 F.3d 273, 279 (8th Cir. 1993) ("The 'such gaming' language of 25 U.S.C. § 2710(d)(1)(B) does not require the state to negotiate with respect to forms of gaming it does not presently permit.") In *Coeur D'Alene Tribe v. State*, 842 F. Supp. 1268, 1276 (D. Idaho 1994) the court conducted an examination of cases from a number of states in which the same argument was made by the complaining tribes.[6] The court concluded that these cases uniformly support the positions of the states and rejected the contention that all types of Class III gaming were opened to the tribes by the fact that *any* Class III games were permitted.

The most recent case, and the one enunciating the law for Alaska, is *Rumsey Indian Rancheria Wintun Indians v. Wilson*, 41 F.3d 421 (9th Cir. 1994). In that case the court said:

> IGRA does not require a state to negotiate over one form of a gaming activity simply because it has legalized another, albeit similar form of gaming. . . . [A] state need only allow Indian tribes to operate games that others can operate, but need not give tribes what others cannot have.

41 F.3d at 427.

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5. Amplification of legal "wheel games" can be found at AS 05.15.690(28), set out in pertinent part in Attachment A.

6. These included *United States v. Sisseton-Wahpeton Sioux Tribe*, 897 F.2d 358 (8th Cir. 1990); *Mashantucket Pequot, supra*; *Lac du Flambeau Tribe of Lake Superior Chippewa Indians v. State of Wisconsin*, 770 F. Supp. 480 (W.D. Wis. 1991); and *Ysleta Del Sur Pueblo v. Texas*, 36 F.3d 1325 (5th Cir. 1994).

Thus it is clear that the only way for an eligible Native group to operate slot machines or video games of chance in Alaska is to amend present law to permit these types of games either directly to the Native group or to another entity. Allowing slot machines and video games of chance to be used on cruise ships in Alaska waters would give an eligible Native group the right to operate the same types of devices under a Tribal/state compact. It would not, however, have any effect upon the opening of Class III gaming to Native groups; the continued sanction for "Monte Carlo nights" to be operated controls this.

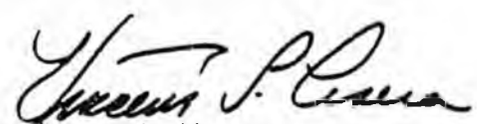
A question has also been posed regarding the outcome if cruise ships were given a limited time within which to operate gaming, that is, the legislation would contain a provision to automatically make the activity illegal on a date certain. We have been asked whether this would grandfather certain games, such as slot machines, for those with a Tribal/state compact in place or whether it would require the State to negotiate over the use of those devices.

The answer cannot be given with absolute certainty as the issue apparently has not been litigated as yet. The compact we have negotiated so far with the KCA contains a provision that would automatically make illegal any game that becomes illegal subsequent to the compact's becoming effective. Contract law should dictate that result, however, Indian gaming law is highly deferential towards tribes and a different result could obtain were the matter to be litigated.

If cruise ship gaming were permitted for simply one season, as we understand the question, it may have no effect on whether presently prohibited devices could be operated under a Class III gaming compact. If the same thing were done in a subsequent year, however, we believe a court very likely would find that these devices are legal in the state and must be allowed to Native gaming operations. Court interpretations of IGRA appear to conclude that, even if an event, such as a "Monte Carlo night" is operated for only one day a year, the games that are permissible for that event are legal for purposes of applying the provisions of IGRA. There is some risk that that interpretation could apply even if the grant to the cruise ships were made only for one year.

If there are any further questions you wish to have addressed, or if anything in this letter needs amplification, please contact us at your convenience.

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Vincent L. Usera
Assistant Attorney General

VLU/jp

cc: Pat Pourchot
Barbara Ritchie
Bruce M. Botelho
Deborah E. Behr

Attachment A

The Prohibition on Slot Machines and Video Games of Chance

AS 05.15.180(a) specifically excludes from eligibility for use in connection with gaming: "playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended primarily for gaming or gambling or any other method or implement not expressly authorized by the department [of revenue]." The statute excepts from this prohibition those items authorized for use under AS 05.15.100(b).

AS 05.15.100(b) permits the operation of "Monte Carlo Nights," in which gaming is authorized for charitable fundraising using a variety of usual gambling activities. Specifically authorized are the "use of playing cards, dice, and numbers wheels." AS 05.15.690(28) defines "numbers wheels" as:

> any electronic, mechanical, or other device with numbers or other figures that are selected randomly and used in a game of chance in which the outcome is determined by the number or figure selected by the device; not including . . . ***slot machines*** or other devices that operate by insertion of a coin or other object that may entitle the person operating the machine to receive a prize by strict dependence on the element of chance.

This is not the only place within the statutes that these devices are made illegal.

AS 43.35.090(3), a part of the taxing statutes, defines a class 3 "coin-operated device" as a:

> slot machine or other apparatus that operates by means of insertion of a coin, token, or similar object and that, by strict dependence upon the element of chance, may deliver or may entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens; . . .

A Class 2 "coin-operated device" is defined under AS 43 35.090(2) as

> a pinball machine, including a bingo type coin-operated device, horse race machine or other apparatus or device that operates by

> means of insertion of a coin, token, or similar object and that, by embodying the elements of chance or skill, awards free plays and that contains a device for releasing free plays and a meter for registering or recording the plays so released, or with provision for multiple coin insertion for increasing the odds; . . .

15 AAC 35.040(b) and (c) specifically make class 2 and class 3 coin-operated devices illegal under AS 05.15.180 and AS 11.66.280.

The criminal statutes (AS 11.66.200 - 11.66.280) do not enumerate those items or games which are illegal under Alaska law, but define as "unlawful" anything not specifically authorized by law. Because the permission to allow certain items to be used in Monte Carlo Night operations only goes to cards, dice, and numbers wheels -- which excludes by definition slot machines and other coin-operated devices, such as video games of chance -- these are not specifically authorized and are, therefore, illegal under criminal law.

MEMORANDUM

State of Alaska

Department of Law

TO: The Honorable Drue Pearce
President, Alaska Senate
The Honorable Gail Phillips
Speaker, Alaska House of
Representatives

DATE: April 12, 1995

TEL.NO.: 465-3600

SUBJECT: Klawock Indian Gaming

FROM: Bruce M. Botelho
Attorney General

BRIEFING PAPER

BACKGROUND:

The Indian Gaming Regulatory Act (IGRA)[1] mandates that states enter into negotiations with recognized Indian groups whenever a group requests negotiation of a Tribal-state compact to govern class III gaming on Indian land.

The IGRA defines "Indian tribe" as any organized group of Indians which is recognized as eligible for programs and services offered by the United States to Indians because of their status as Indians, and which is recognized as having powers of self-government. This latter requirement raises some questions, but has not been the focus of dispute in Alaska because the Interior Department's Solicitor largely recognizes that most all Alaska Native groups fall within IGRA's definition.

The definition of "Indian land," we believe, limits the number of groups that might be eligible to engage in gaming operations in Alaska. Under IGRA, "Indian land" is limited to land that is held in trust by the United States government for the benefit of an Indian tribe, or land that is subject to restriction by the federal government against alienation *and* over which the tribe exercises governmental control. "Indian land" also includes lands within the limits of an Indian reservation. The Solicitor's Office of the Department of the Interior has opined that only four places in Alaska qualify under IGRA definitions to conduct Indian gaming. There are small parcels -- roughly three acres each -- in Kake, Angoon, and Klawock that are trust lands, and the Metlakatla Indian Community within the Annette Island Reserve.

The IGRA defines the classes of gaming. Class I consists of social and ceremonial games played for prizes of minimal value. Class II consists essentially of bingo and pull-tabs. Tribes may operate class II games on Indian land by adopting an ordinance which is approved by the National Indian Gaming Commission. Class II gaming consists of everything that is not class I or II. The IGRA specifies that any class III games permitted to anyone else in the state for any purpose must be allowed to a tribe. This has been interpreted to mean that, even though not played for money,

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1. 25 U.S.C. § 2701 *et seq.*, P.L. 100-497 (Oct. 1988).

games permitted in Monte Carlo nights must be permitted to tribes. Generally, these are card, dice, and wheel games that are found in the usual Las Vegas casino that do not conflict with Alaska law. Alaska law does not permit slot machines or video games of chance, nor does it allow sports pools or bookmaking.[2]

The IGRA also provides that the states must negotiate in good faith and cannot refuse to permit tribes to operate class III games. If a state does refuse to negotiate,the IGRA provides that a tribe can take the state to federal court. If the state and the tribe cannot agree on the terms of a compact, even though negotiations were conducted in good faith, the IGRA provides for a mediator to determine which compact version to recommend to the Secretary of the Interior, who then can impose the compact on the state.

Of those groups presently recognized as eligible, only Klawock, through the Klawock Cooperative Association (KCA) has approached the State to negotiate a compact. The first negotiations took place in April, 1994. The issues raised were twofold: (1) what games would be allowed; and (2) the size and scope of the casino operation. The session concluded with agreement that KCA would develop a plan to guide negotiations and undertake a study to determine the parameters of a feasible casino operation.

In mid-October, 1994, Roseann Demmert, President of the KCA, presented a compact, based upon one its New York counsel had negotiated in South Dakota, to then-Governor Hickel for signing. State negotiators declined the compact. Negotiations began again in late January, 1995. KCA submitted the October 1994 compact for negotiation once again. This compact has served as the framework for current negotiations.

The State's negotiating team consists of the Governor's Special Assistants Albert Kookesh and Tim Towarak, Deputy Attorney General Barbara Ritchie, and Assistant Attorney General Vincent Usera. KCA is represented by Roseann Demmert and attorney Bert Hirsch, who have been pressing for speedy action.

COMPACT SUBJECTS:

The compact may cover the following subjects:

- The types of games that may be played.

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2. The cruise ship gaming bills (HB 236 and SB 60) could affect the types of games allowed in a compact; if this legislation passes in a form allowing slot machines and video games of chance, then these activities must be allowed for Indian gaming as well.

- Provisions for renegotiation of terms.
- Allocations of criminal and civil jurisdiction. The tribe would assume civil regulatory jurisdiction over gaming on its Indian land through its Gaming Commission.
- Betting and payout limits and provisions for player age limits.
- Inspections by State agents.
- Provisions to govern background investigations on all employees, management companies, Commission members, and all providers of equipment or services (other than legal and accounting). All must receive approval after investigation prior to being licensed by the Gaming Commission.
- Provisions for reimbursement to the State for all costs directly associated with its oversight of the gaming facility.
- Accounting and audit procedures are specified; the State will likely be authorized to perform its own audits.
- Provisions for resolution of disputes over compact terms.

IMPACTS:

Operation of a gaming facility in Klawock affects activities of the Department of Public Safety, the Department of Regional and Community Affairs, an agency to oversee the compact, and the Department of Law. There are other agencies that may be impacted as well (e.g., Department of Health and Social Services).

Klawock is directly impacted, as well as other communities on Prince of Wales Island. Other Native groups are interested in the outcome of these negotiations. The United States Department of Interior must approve the compact before it becomes operative.

There are several interest groups that follow expansion of gaming activities carefully. These include non-profits operating charitable gaming, tourism, and religious organizations opposed to gambling in any form.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 / 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM April 21, 1995

SUBJECT: HB 286 and the Federal Indian Gaming Regulatory Act
(Work Order No. 9-LS0991\A)

TO: Senator Drue Pearce
Attn: Ken Erickson

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked if passage of HB 286 would have any effect on Alaska Native gaming under the Indian Gaming Regulatory Act. To the extent that Alaska Native gaming is not already permitted in Alaska, HB 286 would "open the door" and allow Alaska Natives to conduct the forms of gaming that cruise ships are permitted to conduct.

The federal Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., controls what type of gaming or gambling Indian tribes may offer on Indian lands and when they may offer it. 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 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 (casino gaming) are lawful on Indian

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The opinion does not attempt to deal with the question of whether a particular group of Alaska Natives is an Indian tribe as that term is used in IGRA or whether the land on which they propose to conduct gaming are Indian lands. This opinion assumes for discussion purposes that a particular group of Alaska Natives that might conduct gaming under the IGRA is an Indian tribe and that the gaming would be conducted on Indian lands.

lands only if (1) the gaming is authorized by a tribal ordinance or resolution, (2) those lands are located in a state that permits such gaming for any purposes by a person, organization, or entity, and (3) the gaming is conducted in conformance with a tribal-state compact entered into by the tribe and state.

It seems clear to me that HB 286 allows a "person, organization, or entity" to conduct class III gaming events in the state which, under the terms of IGRA, means that Indian tribes in Alaska could conduct all those class III games permitted of cruise ships which, in my opinion seems to include everything. However, the question is whether class III gaming is already permitted in Alaska. In my opinion, at least some forms of class III games are already permitted in Alaska. For example, lotteries and sled dog racing (which could possibly be considered a form of pari-mutuel racing) are already permitted for charitable organizations in Alaska. Therefore, Indian tribes can conduct those activities in Alaska. Charitable organizations are also allowed to conduct "monte carlo nights" one night each year under AS 05.15.100(b). A permit to conduct a "monte carlo night" allows the permittee to use "cards, dice, and numbers wheels", (essentially allowing casino gambling to be conducted). The definition of "numbers wheels" however specifically excludes slot machines and coin operated gaming devices so these types of gambling devices are not permitted at "monte carlo nights". An argument can be made though that these "monte carlo nights" do not allow Alaska Indian tribes to conduct unlimited class III gaming as the state does not allow persons to receive money for gambling at "monte carlo nights". Participants at "monte carlo nights" may only receive scrip which can be exchanged for prizes but not money. Federal courts that have applied IGRA have held that if state law only permits limited stakes card games (for example, games with betting limits of a set amount such as $5 or $25), that Indian tribes may only perform limited stakes games and not unlimited stakes "Vegas" stvie card games. Similarly, I believe an argument can be made that our "monte carlo nights" only allow a limited stakes type of "card, dice, and numbers wheels" games for prizes and that Indian tribes in Alaska would be limited to those games under current state law.[1] If such an argument were accepted then HB 286 would clearly "open the door" to unlimited "Vegas" stvie "card, dice, and numbers wheels" games. If such an argument were not successful then such games are already available in Alaska and HB 286 does not "open the door" as to those games. Under either scenario however HB 286 would "open the door" to slot machines and coin operated gaming devices as those devices are not currently permitted under any situation in Alaska.[2]

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[1] I am not necessarily convinced that such an argument would succeed. I am merely stating that such an argument is available.

[2] Indian tribes have consistently argued that if a state allows any type of class III gaming they must allow all types of class III gaming. While it is my understanding that that argument may have met with some early success and has frequently been used in negotiations, that argument has not won favor in the courts especially in the last several years. See e.g., Cheyenne River Sioux Tribe v. South Dakota, 3 F.3d 273 (8th Cir. 1993).

You have also asked about what the procedure is for negotiating a compact and entering into a compact with Alaska Indian tribes

The IGRA provides a framework for negotiation of the tribal-state compact -- the tribe requests the state to enter into negotiations, upon receiving such a request, the state "shall" negotiate with the tribe in "good faith" to enter into such a compact.

In State ex rel. Stephan v. Finney, 251 Kan. 559, 836 P.2d 1169 (1992) (copy attached), the Kansas Supreme Court was confronted with the very question you have asked. In that case the Attorney General of Kansas sued the Kansas Governor challenging the authority of the governor to negotiate and enter into a binding tribal-state compact under IGRA. The court in deciding whether the governor had such power looked to the Kansas Constitution (the governor has the power to execute the laws - the legislature the power to make the laws), statutes (there was no clear grant of authority for the governor to enter into negotiations and bind the state thereby), and the compact itself. The compact was important in that case because it greatly expanded state agency operations beyond those authorized by the legislature, including the hiring of staff and the creation basically of a new state office. These actions, the court concluded, operated as the enactment of new laws and the amendment of existing laws and therefore legislative approval or authorization for the actions was necessary. Therefore,

> [o]n the narrow issue presented, we concluded the Governor had the authority to enter into negotiations with the Kickapoo Nation, but, in the absence of an appropriate delegation of power by the Kansas Legislature or legislative approval of the compact, the Governor has no power to bind the state to the terms thereof.

State ex rel. Stephan, supra, at 1185

The analysis used by the Kansas Supreme Court appears equally valid in Alaska. In Alaska the executive power of the state is vested in the governor. Article III, § 1 of the Alaska Constitution. The governor is "responsible for the faithful execution of the laws." Article III, § 16. Meanwhile, the legislative power of the state is vested in the legislature. Article II, § 1. My review of the statutes has not revealed any grant of authority by the legislature to the governor so as to enable the governor to enter into binding negotiations with an Indian tribe for a state-tribal compact under IGRA. See also, Kickapoo Tribe of Indians v. Babbitt, 827 F. Supp. 37 (D.D.C. 1993)

Even though there are no state laws that clearly provide that the governor may negotiate with a tribe under IGRA, I conclude that it seems reasonable for the governor to have inherent authority as the executive authority for the state to represent the state in its interaction with the tribe under the federal law. The governor, though, may not bind the state to a compact

he has negotiated, without the legislature's approval of that compact or the legislature's grant of authority to the governor to so bind the state.[1]

GPL.klb
95-282.klb

[1] I have some questions about whether the legislature can actually delegate to the governor the authority to enter into a compact that actually changes or alters the laws of the state, as that could be construed as an unconstitutional delegation of the legislature's law-making power.

- PERMITTEES WHO RECEIVED MONTE CARLO PERMITS IN 1994

PERMIT NUMBER	THE ORGANIZATION	ADDRESS	PERM CITY	PERM STATE	PERM ZIP
940001	NATIONAL EDUCATION ASSOCIATION ALASKA	114 SECOND STREET ****(SEE COMMENTS)****	JUNEAU	AK	99801
940010	GREATER ANCHORAGE INC.	327 EAGLE STREET	ANCHORAGE	AK	99501
940065	ALASKA INFORMATION RADIO READG. ED SERV	1102 W. INTERNATIONAL AIRPORT RD	ANCHORAGE	AK	99518
940071	JUNEAU YOUTH FOOTBALL LEAGUE, INC.	P.O. BOX 211409	AUKE BAY	AK	99821
940104	FORT GREELY OFFICERS WOMEN'S CLUB	502 SECOND STREET, P.O. BOX 115	APO AP		96508
940106	BPO ELKS LODGE #1595 WRANGELL	P.O. BOX 961	WRANGELL	AK	99929
940128	YUKON QUEST INTERNATIONAL **	P.O. BOX 75015	FAIRBANKS	AK	99707
940133	EAGLE RIVER LIONS CLUB	17025 PARK PLACE	EAGLE RIVER	AK	99577
940153	BETHEL BROADCASTING INC.	POUCH 468	BETHEL	AK	99559
940179	NATIONAL MULTIPLE SCLEROSIS SOCIETY AK C	511 WEST 41ST AVE STE 101	ANCHORAGE	AK	99503
940199	BPO ELKS LODGE #1483 CORDOVA	P.O. BOX 59	CORDOVA	AK	99574
940201	BPO ELKS LODGE #1551 FAIRBANKS	P.O. BOX 71427	FAIRBANKS	AK	99707
940204	WILLOW AREA COMMUNITY ORGANIZATION	P.O. BOX 1027	WILLOW	AK	99688
940223	CHUGIAK EAGLE RIVER CHAMBER OF COMMERCE	P.O.BOX 770353	EAGLE RIVER	AK	99577
940235	ALASKA TELEPHONE ASSOCIATION	4341 B STREET, SUITE 304	ANCHORAGE	AK	99503
940240	LOYAL ORDER OF MOOSE #1266	P.O. BOX 609	CORDOVA	AK	99574
940259	FRATERNAL ORDER OF EAGLES AERIE #162	PO BOX 8162	KETCHIKAN	AK	99901
940260	FOE AUXILIARY #162	PO BOX 5643	KETCHIKAN	AK	99901
940268	EMBLEM CLUB #463 HAINES **	P.O. BOX 351	HAINES	AK	99827
940271	FAIRBANKS CURLING LIONS	P.O. BOX 71429	FAIRBANKS	AK	99707
940285	AMVETS POST 2 INC.	855 E. 38TH AVENUE	ANCHORAGE	AK	99503
940307	MUSCULAR DYSTROPHY ASSOCIATION, AK CHPT.	1838 WEST NORTHERN LIGHTS BLVD.	ANCHORAGE	AK	99517
940308	LOYAL ORDER OF MOOSE LODGE #1534	4211 ARCTIC BLVD.	ANCHORAGE	AK	99503
940340	DILLINGHAM BEAVER ROUNDUP FESTIVAL ASSOC	P.O. BOX 267	DILLINGHAM	AK	99576
940341	ANCHORAGE RESTAURANT & BEVERAGE ASSOC	341 EAST 56TH AVENUE SUITE 200	ANCHORAGE	AK	99510
940434	ALPINE CIVIC CLUB	P.O. BOX 344	SUTTON	AK	99674
940442	HOMEBUILDERS ASSOC OF JUNEAU	P.O. BOX 33259	JUNEAU	AK	99801
940453	CORDOVA CHAMBER OF COMMERCE **COMMENTS**	P.O. BOX 99	CORDOVA	AK	99574
940492	KENAI PENINSULA HOCKEY ASSOCIATION INC.	P.O. BOX 1864	SOLDOTNA	AK	99669
940506	GOLD RUSH DAYS INC	P.O. BOX 1393	VALDEZ	AK	99686
940524	EMBLEM CLUB #142 SITKA **	P.O. BOX 275	SITKA	AK	99835
940528	F.O.E. #3525	5765 SPUR HWY	KENAI	AK	99611
940532	COPPER RIVER BASIN LIONS CLUB	P.O. BOX 146	GLENNALLEN	AK	99588
940555	MIDNIGHT SUN SWIM TEAM INC.	P.O. BOX 83625	FAIRBANKS	AK	99708
940657	ALPINE ALTERNATIVES	2518 E. TUDOR RD STE 105	ANCHORAGE	AK	99507
940664	ALASKA STATE AFL-CIO	2501 COMMERCIAL DRIVE	ANCHORAGE	AK	99501
940757	TALKEETNA CHAMBER OF COMMERCE	P.O. BOX 334	TALKEETNA	AK	99676
940817	MARCH OF DIMES ALASKA CHAPTER **	6041 MACKAY STREET, SUITE 101	ANCHORAGE	AK	99518
940834	ALASKA WOMEN'S POLITICAL CAUCUS	P.O. BOX 101571	ANCHORAGE	AK	99510
940869	ALASKA WOMEN IN MINING (FBK)	P.O. BOX 83542	FAIRBANKS	AK	99708
940887	BPO ELKS LODGE #1773 SEWARD	P.O. BOX 426	SEWARD	AK	99664
940890	AMERICAN CANCER SOCIETY AK DIV INC	1057 WEST FIREWEED LANE, SUITE 204	ANCHORAGE	AK	99503
940899	CIRCLE DIST HISTORICAL SOCIETY INC	P.O. BOX 31893	CENTRAL	AK	99730
940923	CHALLENGE ALASKA	P.O. BOX 110065	ANCHORAGE	AK	99511
940993	ALASKA SUPPORT INDUSTRY ALLIANCE	4220 B STREET, SUITE 200	ANCHORAGE	AK	99503
941053	KODIAK LIONS CLUB **COMMENTS**	P.O. BOX 1735	KODIAK	AK	99615
941175	ANCHOR POINT CHAMBER OF COMMERCE	P.O. BOX 610	ANCHOR POINT	AK	99556
941179	AMVETS POST #4	35390 K-BEACH ROAD #30	SOLDOTNA	AK	99669
941185	PETERSBURG BUSINESS & PROFESSIONAL WOMEN	P.O. BOX 635	PETERSBURG	AK	99833
941205	GREATER JUNEAU CHAMBER OF COMMERCE	124 W FIFTH ST	JUNEAU	AK	99801
941237	KID'S STOP, INC.	P.O. BOX 90	HEALY	AK	99743
941255	ALASKA INDEPENDENT BLIND	1102 W. INTERNATIONAL AIRPORT ROAD	ANCHORAGE	AK	99518
941277	INTL ASSOC INSULATORS & ASBESTOS WORKERS	407 DENALI	ANCHORAGE	AK	99501

PERMITTEE

Wednesday April 26, 1995 10:34 AM Page 2

PERMIT NUMBER	THE ORGANIZATION	ADDRESS	PERM CITY	PERM STATE	PERM ZIP
941309	PRINCE WILLIAM SOUND TOURISM COALITION	PO BOX 243044	ANCHORAGE	AK	99524
941315	ALASKA PUBLIC EMPLOYEES ASSOCIATION/AFT	211 4TH STREET #306	JUNEAU	AK	99801
941360	ALASKA STATE ASSOC OF LIFE UNDERWRITERS	P.O. BOX 103956	ANCHORAGE	AK	99510
941477	GOLDEN FLEECE CLUB	200 W. 34TH STREET, BOX 694	ANCHORAGE	AK	99503
941508	USCG OFFICERS WIVES CLUB OF KODIAK	P.O. BOX 190419	KODIAK	AK	99619
941535	CITY OF ANIAK	P.O. BOX 189	ANIAK	AK	99557
941541	ALASKA MINERS ASSOCIATION/NOME BRANCH	P.O. BOX 1974	NOME	AK	99762
941561	BOREALIS KIWANIS, INC.	P.O. BOX 70117	FAIRBANKS	AK	99707
941588	CHUGIAK AREA BUSINESS ASSOC. INC.	P.O. BOX 670313	CHUGIAK	AK	99567
941615	UNALASKA DUTCH HARBOR CHAMBER/COMMERCE	P.O. BOX 333	DUTCH HARBOR	AK	99692
941630	CENTER FOR PACIFIC RIM STUDIES & CULT.	2808 E. TUDOR, STE 3	ANCHORAGE	AK	99507

Lot Total Permittees

12 Clubs

413
36
277

PERMITTEES WITH 1994 MONTE CARLO PERMITS

delinquent	≤ $0.00	$1 - $1,000	$1,001 -$5,000	> $5,000	total # permittees
18	10	15	16	5	64
	amt	amt	amt	amt	amt
1 # no 94 afs	1 # $(4,243.41)	1 # $ 116.50	1 # $ 1,027.00	1 # $ 5,266.65	$ 78,153.65
2 # no 94 afs	2 # (40.25)	2 # 225.00	2 # 1,176.00	2 # 6,856.00	
3 # no 94 afs	3 # 0.00	3 # 350.00	3 # 1,182.85	3 # 7,668.08	
4 # no 94 afs	4 # 0.00	4 # 373.50	4 # 1,253.11	4 # 9,531.00	
5 # no 94 afs	5 # 0.00	5 # 444.50	5 # 1,364.30	5 # 11,165.75	
6 # no 94 afs	6 # 0.00	6 # 475.29	6 # 1,367.00		
7 # no 94 afs	7 # 0.00	7 # 476.00	7 # 1,391.53		
8 # no 94 afs	8 # 0.00	8 # 515.00	8 # 1,432.00		
9 # no 94 afs	9 # 0.00	9 # 683.00	9 # 1,914.66		
10 # no 94 afs	10 # 0.00	10 # 735.00	10 # 2,192.90		
11 # no 94 afs		11 # 796.50	11 # 2,210.00		
12 # no 94 afs		12 # 879.00	12 # 2,262.55		
13 # no 94 afs		13 # 896.00	13 # 3,217.08		
14 # no 94 afs		14 # 987.72	14 # 3,228.87		
15 # no 94 afs		15 # 992.62	15 # 3,380.00		
16 # no 94 afs			16 # 4,402.35		
17 # no 94 afs					
18 # no 94 afs					
totals $___ =	$ (4,283.66)	$ 8,947.63	$ 33,002.20	$ 40,487.48	$ 78,153.65

FISCAL NOTE

STATE OF ALASKA **BILL NO.** HB 327
1995 LEGISLATIVE SESSION

Revision Date:
Title: Eliminate Monte Carlo Nights
Dept. Affected: Revenue
BRU: Revenue Operations
Component: Charitable Gaming Division
Sponsor: Representative Phillips
Requester: House Judiciary
COMPONENT SERIAL NO. 1883

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	(2.0)	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: $ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Impact of this bill will result in a loss of $78,154 net proceeds no longer availabe to non-profits conducting gaming.

Prepared by: Dennis R. Poshard, Director
Division: Charitable Gaming Division
Phone: 465-2279
Date: 5/1/95
Approved by
Commissioner: Wilson L. Condon
Agency: Department of Revenue
Date: 5/1/95

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ANCHORAGE

ARMED SERVICES YMCA OF THE USA
Post Office Box 272
Elmendorf Air Force Base, Alaska 99506
Telephone: (907) 753-2121
FAX (907) 753-2068

United Way

Armed Services YMCA [501(c)(3)], Board of Management adopted the following resolution at the regular board meeting held May 3, 1995. Board of Management list below.

We, the Board of Management of the Armed Services YMCA strongly support the concept of Charitable Gaming, **including pull-tabs** in the State of Alaska. The proceeds derived from Charitable Gaming directly supports 25 Programs and Services for over 35,000 deserving young military members and their families each year. We urge you to keep "charity" in Charitable Gaming and not abolish pull-tabs as a source of revenue for the Armed Services YMCA.

Rita Ramos, Chair ASYMCA
Insurance Consultant

Jim McMillan, 1st Vice ASYMCA
VP, Key Bank of Alaska

Debra Goetze, 2nd Vice ASYMCA
Regional Mgr SATO Travel

Floyd Gori, Treasurer ASYMCA
Colonel, USAF (Ret)

Jim McGoldrick
CEO, ORCA Services Inc.

Ben Ball
Development Mgr Anch Intl Apt

Philip Benediktsson
Owner Northstar Enterprises

Carl Bradford, Secretary ASYMCA
Mgr Military Branch Alaska USA FCU

Dr. Lydia Hays, Ed.E
ED, CIRI Foundation

Samuel Johnson, Col, USAS
Elmendorf Base Commander

Tamara Krebs
Mgr Classified Anchorage Daily News

Wallace Matteson, Col, USA
FT Richardson Garrison Commander

Joseph Nishimura
Owner, PAN Alaska

Dan Nice
Col, AK Air National Guard

Nancy Overpeck
UAA Dept of Food Service

Ed Belyea
Brig.Gen AK ANG (Ret)

Glen Glenzer
Captain, USN (Ret)

Scott Griffith
Red Cross, Elmendorf AFB

Bob Ulin
Military Welcome Center

Jeff Hamburg
MSgt, USAF

Charles Hardy
SCPO, USN

Roger Mongomery
FT Richardson Garrison Sergeant Major

John Neil
Base Suppintendent

Tom Morgan
Executive Director

HOUSE BILL NO. 327

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES PHILLIPS, Mulder

Introduced: 5/1/95
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act eliminating 'monte carlo' nights as an authorized form of charitable gaming; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 05.15.100(d) is amended to read:

(d) The department may issue a multiple-beneficiary permit to two to six municipalities or qualified organizations or to a combination of two to six municipalities and qualified organizations that apply jointly for the permit. The permit gives the permit holders the privilege of jointly conducting the activities specified in (a) [AND (b)] of this section [, SUBJECT TO THE RESTRICTIONS SET OUT IN (b) OF THIS SECTION].

*** Sec. 2.** AS 05.15.115(c) is amended to read:

(c) A permittee may not contract with more than one operator at a time to conduct the same type of activity. For the purposes of this subsection, bingo games, raffles, lotteries, pull-tab games, ice classics, rain classics, goose classics, mercury

classics, canned salmon classics, salmon classics, king salmon classics, dog mushers' contests, fish derbies, **and** contests of skill [, AND ALL ACTIVITIES PERMITTED UNDER AS 05.15.100(b)] are each a different type of activity.

*** Sec. 3.** AS 05.15.180(a) is amended to read:

(a) **This** [EXCEPT AS PROVIDED IN AS 05.15.100(b), THIS] chapter does not authorize the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended primarily for gaming or gambling or any other method or implement not expressly authorized by the department.

*** Sec. 4.** AS 05.15.180(b) is amended to read:

(b) With the exception of raffles, lotteries, bingo games, pull-tab games, rain classics, goose classics, mercury classics, canned salmon classics, salmon classics, **and** king salmon classics, [AND OTHER ACTIVITIES AUTHORIZED UNDER AS 05.15.100(b),] an activity may not be licensed under this chapter unless it existed in the state in substantially the same form and was conducted in substantially the same manner before January 1, 1959.

*** Sec. 5.** AS 05.15.030(b), 05.15.100(b), and 05.15.180(c) are repealed.

*** Sec. 6.** This Act takes effect January 1, 1996.

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

(907) 586-2777

AVRUM M. GROSS
SUSAN A. BURKE

May 2, 1995

Senator Drue Pearce
State Capitol, Room 111
Juneau, Alaska 99801-1182

Dear Senator Pearce:

We have been given a copy of the April 28 Opinion of the Department of Law concerning cruise ship gambling. The opinion discusses the potential impact of allowing cruise ship gambling on future negotiations with Native groups seeking to conduct class III gaming in the state.

As a general matter, the opinion fairly and adequately reviews the various issues posed by the passage of the cruise ship legislation. The purpose here is not to criticize the Department's view but to supplement some of the analysis. On page 4 of the opinion, the Attorney General discusses the effect on Indian gaming negotiations if the legislature were to allow cruise ship gambling for one year with an automatic repealer after that date. The opinion concludes that while the answer cannot be given "with absolute certainty," it is probable that an authorization of cruise ship gambling for one season would have no effect on expanding the types of gambling that must be allowed under Indian Gaming compacts. However, reauthorization of gambling for subsequent yearly periods

would, in the Attorney General's view, substantially increase the risk of expanding the scope of gambling laws for Indian gaming compact purposes. The question then arises as to what benefit the cruise ships would achieve by obtaining permits to operate for just one season with the future at best being uncertain.

The answer lies in the fact that the law pertaining to Indian Gaming compacts is far from settled. The April 28 Attorney General's opinion mentions that there are some federal court decisions that hold that if a state authorizes any form of class III gambling for any purpose, it must allow Indian groups to at least negotiate over the operation of all forms of Class III gambling. Under this line of federal authority, so long as Monte Carlo nights are legal in Alaska and some forms of Class III gambling like cards and dice are allowed, Native groups already have the right to conduct all forms of Class III gambling under a gaming compact. If that is the law, then the cruise ship exception to state gambling laws, if passed, would have no real impact on the issue. If, on the other hand, authorization of some forms of Class III gambling does not authorize all forms of Class III gambling for Indian Gaming compact purposes, the passage of the cruise ship exemption would, in fact, broaden the scope of Indian Gaming, assuming that the exemption is repeated year after year. The Attorney General is correct

when he points out that the 9th Circuit, of which Alaska is a member, has recently issued an opinion in Rumsey Indian Rancheria Wintum Indians v. Wilson, 41 F. 3d 421 (9th Circuit 1994), which holds that the Indian Gaming Act does not require a state to negotiate over all forms of gaming activity simply because it has authorized some forms of Class III gambling. The problem is that this may not be the 9th Circuit's last word on the subject. The plaintiffs in Rumsey have asked that the case, which was originally heard by a three judge panel, be reheard en banc by the full panel of the judges of the 9th Circuit. Briefs were filed by both parties in January, but the 9th Circuit has not yet ruled whether it will reconsider the issue. It may well do so, and if that occurs an entirely different decision might be forthcoming. Even if not, the fact that the plaintiffs have asked for an en banc hearing suggests that they are prepared at least to seek review by the U.S. Supreme Court, which of course is the only court that can resolve differing views in the various lower federal courts.

It may be, then, that in the next year a more definitive judicial interpretation of the Indian Gaming Act may become available, one which reduces or eliminates the risk that the continued operation of cruise ship gambling will authorize Indian gambling in the same degree. Since the Attorney General apparently believes that authorization

for cruise ship gambling for the present season would not open up the issue beyond that point, the cruise ships seek an opportunity to operate their casinos on-board for at least the limited period when the issue is hopefully, more definitely resolved in the federal courts.

Yours very truly,

GROSS & BURKE

Avrum M. Gross

AMG:ddp

MEMORANDUM

STATE OF ALASKA
DEPARTMENT OF REVENUE

TO: The Honorable Drue Pearce
President of the Senate

DATE: April 28, 1995

TELEPHONE: (907) 465-2229

SUBJECT: Release of Monte Carlo Information

FROM: Dennis Poshard
Director
Charitable Gaming Division

Attached is the information you requested regarding net proceeds of Monte Carlo permit holders. In our earlier conversation, I informed you that the information was confidential taxpayer information. Since that time, I have received an oral opinion from the Attorney General's office allowing me to release the information to the legislature for the purposes of making public policy decisions. The basis for this determination is an Attorney General's opinion of January 12, 1989 regarding the release of taxpayer information.

However, the information retains its confidential status. It should be viewed only by legislators and necessary staffers. Public release of this information could result in severe penalties. I am sure that you will use the information in a responsible manner and am happy to provide it to you.

If our office can provide further assistance, please call me at 465-2229.

PERMITTEES WITH 1994 MONTE CARLO PERMITS

> $5,000

5

	permit #	organization		net
1	94-0235	ALASKA TELEPHONE ASSOCIATION	$	5,266.65
2	94-1615	UNALASKA DUTCH HARBOR CHAMBER/COMMERCE		6,856.00
3	94-1205	GREATER JUNEAU CHAMBER OF COMMERCE		7,668.08
4	94-0179	NATIONAL MULTIPLE SCLEROSIS SOCIETY AK C		9,531.00
5	94-0657	ALPINE ALTERNATIVES		11,165.75
		totals	$	40,487.48

$1,001 -$5,000

16

	permit #	organization		net
1	94-0532	COPPER RIVER BASIN LIONS CLUB	$	1,027.00
2	94-0199	BPO ELKS LODGE #1483 CORDOVA		1,176.00
3	94-0223	CHUGIAK EAGLE RIVER CHAMBER OF COMMERCE		1,182.85
4	94-0260	FOE AUXILIARY #162		1,253.11
5	94-0104	FORT GREELY OFFICERS WOMEN'S CLUB		1,364.30
6	94-0001	NATIONAL EDUCATION ASSOCIATION ALASKA		1,367.00
7	94-1541	ALASKA MINERS ASSOCIATION/NOME BRANCH		1,391.53
8	94-1508	USCG OFFICERS WIVES CLUB OF KODIAK		1,432.00
9	94-1237	KID'S STOP, INC.		1,914.66
10	94-1053	KODIAK LIONS CLUB		2,192.90
11	94-0506	GOLD RUSH DAYS INC.		2,210.00
12	94-0240	LOYAL ORDER OF MOOSE #1266		2,262.55
13	94-0899	CIRCLE DIST HISTORICAL SOCIETY INC		3,217.08
14	94-0340	DILLINGHAM BEAVER ROUNDUP FESTIVAL ASSOC		3,228.87
15	94-0807	MUSCULAR DYSTROPHY ASSOCIATION, AK CHPT.		3,380.00
16	94-1309	PRINCE WILLIAM SOUND TOURISM COALITION		4,402.35
		totals	$	33,002.20

$1 - $1,000

15

	permit #	organization		net
1	94-0271	FAIRBANKS CURLING LIONS	$	116.50
2	94-0201	BPO ELKS LODGE #1551 FAIRBANKS		225.00
3	94-1477	GOLDEN FLEECE CLUB		350.00
4	94-0555	MIDNIGHT SUN SWIM TEAM INC.		373.50
5	94-0434	ALPINE CIVIC CLUB		444.50
6	94-1535	CITY OF ANIAK		475.29
7	94-0133	EAGLE RIVER LIONS CLUB		476.00
8	94-1315	ALASKA PUBLIC EMPLOYEES ASSOCIATION/AFT		515.00
9	94-1175	ANCHOR POINT CHAMBER OF COMMERCE		583.00
10	94-1360	ALASKA STATE ASSOC OF LIFE UNDERWRITERS		735.00
11	94-0664	ALASKA STATE AFL-CIO		798.50
12	94-0341	ANCHORAGE RESTAURANT & BEVERAGE ASSOC		879.00
13	94-0887	BPO ELKS LODGE #1773 SEWARD		896.00
14	94-1179	AMVETS POST #4		987.72
15	94-0204	WILLOW AREA COMMUNITY ORGANIZATION		992.62
		totals	$	8,947.63

< $0.00

10

	permit #	organization	net
1	94-0010	GREATER ANCHORAGE INC.	$ (4,243.41)
2	94-1588	CHUGIAK AREA BUSINESS ASSOC. INC.	(40.25)
3	94-0153	BETHEL BROADCASTING INC.	0.00
4	94-0283	AMVETS POST 2 INC.	0.00
5	94-0308	LOYAL ORDER OF MOOSE LODGE #1534	0.00
6	94-0442	HOMEBUILDERS ASSOC OF JUNEAU	0.00
7	94-0453	CORDOVA CHAMBER OF COMMERCE	0.00
8	94-0492	KENAI PENINSULA HOCKEY ASSOCIATION INC	0.00
9	94-0524	EMBLEM CLUB #142 SITKA	0.00
10	94-0528	F.O.E. #3525	0.00
		totals	$ (4,283.66)

delinquent

18

	permit #	organization	
1	94-0063	ALASKA INFORMATION RADIO READG. ED SERV	no 94 afs
2	94-0071	JUNEAU YOUTH FOOTBALL LEAGUE. INC.	no 94 afs
3	94-0106	BPO ELKS LODGE #1595 WRANGELL	no 94 afs
4	94-0128	YUKON QUEST INTERNATIONAL	no 94 afs
5	94-0268	EMBLEM CLUB #463 HAINES	no 94 afs
6	94-0757	TALKEETNA CHAMBER OF COMMERCE	no 94 afs
7	94-0817	MARCH OF DIMES ALASKA CHAPTER	no 94 afs
8	94-0834	ALASKA WOMEN'S POLITICAL CAUCUS	no 94 afs
9	94-0869	ALASKA WOMEN IN MINING (FBK)	no 94 afs
10	94-0890	AMERICAN CANCER SOCIETY AK DIV INC	no 94 afs
11	94-0923	CHALLENGE ALASKA	no 94 afs
12	94-0993	ALASKA SUPPORT INDUSTRY ALLIANCE	no 94 afs
13	94-1185	PETERSBURG BUSINESS & PROFESSIONAL WOMEN	no 94 afs
14	94-1255	ALASKA INDEPENDENT BLIND	no 94 afs
15	94-1277	INTL ASSOC INSULATORS & ASBESTOS WORKERS	no 94 afs
16	94-1477	GOLDEN FLEECE CLUB	no 94 afs
17	94-1561	BOREALIS KIWANIS, INC.	no 94 afs
18	94-1630	CENTER FOR PACIFIC RIM STUDIES & CULT.	no 94 afs

total # of permittees	total net proceeds
64	$ 78,153.55

Revisor's notes. — In 1993, under § 13, ch. 34, SLA 1993 and § 128, ch. 35, SLA 1993 the citation to the Uniform Commercial Code was revised.

NOTES TO DECISIONS

This section does not modify AS 45.01.207, concerning performance or acceptance of performance under reservation of rights, but serves to strengthen the interpretation of that section requiring a creditor seeking to reserve rights in the face of a full payment check to communicate that intent to the debtor before cashing the check to enable the debtor to consider the creditor's position and either agree or stop payment on the check. Air Van Lines v. Buster, 673 P.2d 774 (Alaska 1983).

It is not necessary to tender cash. Ward v. Miller, 13 Alaska 752 (1952).

A check, unobjected to, would constitute a proper tender. Ward v. Miller, 13 Alaska 752 (1952).

Sec. 09.25.095. Effect of private seals and scrolls. Private seals and scrolls as a substitute for seals are abolished. They are not required to an instrument, but when used their effect remains unchanged. (§ 3.10 ch 101 SLA 1962)

Revisor's notes. — Formerly AS 09.25.130. Renumbered in 1994.

Article 2. Public Records.

Sec. 09.25.100. Disposition of tax information. Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, or prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information that may assist in the collection of delinquent taxes. (§ 3.21 ch 101 SLA 1962)

Opinions of attorney general. — The department can publish decisions that have not been appealed or for which confidentiality was not voluntarily waived if it establishes guidelines for publication to protect a taxpayer's identity. June 16, 1983 Op. Att'y Gen.

Determinations of the State Assessment Review Board made under AS 43.56.130 (oil and gas property taxes) are public

Article 6. Abuse of Public Office.

Section
850. Official misconduct
860. Misuse of confidential information

Collateral references. — 63 Am. Jur. 2d. Public Officers and Employees. §§ 346-359.

67 C.J.S., Officers, §§ 120-126, 255-263.

Infamous crime or one involving moral turpitude constituting disqualification to hold public office, 52 ALR2d 1314.

Official oppression, what constitutes offense of, 33 ALR2d 1007.

Personal liability of policeman, sheriff, or similar peace officer or his bond, for injury suffered as a result of failure to enforce law or arrest law breaker, 41 ALR3d 700.

Removal of public officer for misconduct during previous term, 42 ALR3d 691.

Validity and construction of statute authorizing grand jury to submit report concerning public servant's noncriminal misconduct, 63 ALR3d 586.

Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 ALR4th 614.

Sec. 11.56.850. Official misconduct. (a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, the public servant

(1) performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized; or

(2) knowingly refrains from performing a duty which is imposed upon the public servant by law or is clearly inherent in the nature of the public servant's office.

(b) Official misconduct is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Sec. 11.56.860. Misuse of confidential information. (a) A person who is or has been a public servant commits the crime of misuse of confidential information if the person

(1) learns confidential information through employment as a public servant; and

(2) while in office or after leaving office, uses the confidential information for personal gain or in a manner not connected with the performance of official duties other than by giving sworn testimony or evidence in a legal proceeding in conformity with a court order.

(b) As used in this section, "confidential information" means information which has been classified confidential by law.

(c) Misuse of confidential information is a class A misdemeanor. (§ 6 ch 166 SLA 1978)