

SB

165

David Sanden
P.O. Box 210306
Auke Bay, AK 99821

Senate Judiciary Committee
State Capitol
Juneau, AK 99801

May 02, 2005

Chairman Seekins and members.

Please take into consideration a few points before taking action on SB 165 regardless of your position on gambling.

\$25,000.00 non-refundable application fee.

First come first served permitting.

- I can see the state recouping the expenses of its background investigation and application expenses and refunding any additional sum to the applicant. However this legislation specifically avoids this. Is this language simply a thinly veiled do not apply unless... sign?
- What happens if more applicants than the allotted number of allowable permits are received? Why is it that this bill does not set up a time line and due date for what will be a new legalized activity and permitting process? Who can possible benefit from first come first served permitting? What is the hurry and who stands to gain from rushing the process?

\$500,000.00 CASH bond.

- Well, this certainly is not at all subtle. Lets see, the state collects its tax or fee up front in the form of a \$10,000.00 fee per card table but wants a half million cash bond to fall back on? This is put into the smoke and mirrors process of only wanting "serious" applicants. However, this is certainly a do not pass go if not an outright slap in the face for the super majority of Alaskans who would otherwise be qualified to participate in the permitting process. If it is the intent of this legislation to run a tight ship why not make a felon out of anyone who tries to circumvent the permitting or actual process of this would be new form of gambling. Could it be that the intent of this legislation is to create a monopoly and limit access to that monopoly with wealth in the form of \$500,000.00 cash being the most formidable hurdle and judgment gauge?
- This dangerously opens the door and creates opportunity to very deep pockets in the national gambling movement who may very well see this as a prime opportunity to get in on the ground floor in Alaska even if it comes with a short term loss. Does anyone hear the push and cry for off track paramutual betting at cards rooms in 2007, then the push for slot machines and other table games in the

card rooms in 2009 etc., etc., make no mistake about it these scenarios are very seriously on the minds of many. One could likely even make a very strong argument that this legislation is currently carefully worded to prevent opportunity for ordinary Alaskan's while providing such a step entry gate as to specifically encourage highly financed national gambling interests. The long-term stakes are enormous if you can eliminate the local competition early.

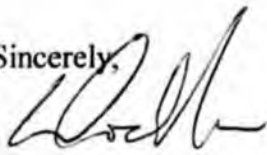
Politicized selection process.

- Why doesn't this legislation put forth a rigid yet certain set of criteria for what constitutes a qualified applicant? Then simply take all the qualified applicants and hold a lottery for the initial selection process? Who benefits from politicizing the initial permitting process? The Board appointed to carry out this selection process should be primarily concerned with the citizens of Alaska and the enforcement process not having to "pick" through the "qualified" applicants. This needless selection process opens these individual board members up to countless possible avenues of graft and corruption. I seriously wonder who would even consider taking one of these board seats considering the language of the current legislation.
- I am also most curious about how much money the state of Alaska is willing to spend in defense of its selections when many qualified applicants apply and one or two are selected over others equally qualified. Keep in mind you are legalizing and monopolizing a vice. It would be extremely naive to hope only a very few will apply.

Gambling expansion now and a platform for the future?

- Over and over you have heard that this legislation is nothing more than an effort to legalize an otherwise illegal process that is happening all across the state from back rooms to the kitchen table. After all it has been said "its on T.V." therefore it must be good? Well, if its no big deal why not simply de-criminalize gambling on card games and let the free market and the citizens of Alaska figure it out?
- The answer is laughing inside Pandora's box a controlled and monopolized platform for gambling expansion in Alaska. Beware of a bet that seems too good to be true.

Sincerely,



David Sanden

SENATOR
JOHN J. COWDERY
Anchorage

Committees
Chair: Rules
Chair: Transportation
Chair: World Trade &
State/Federal Relations
Legislative Council
State Affairs

Alaska State Legislature

Senate

January - May:
State Capitol, Suite 101
Juneau, Alaska 99801-1182
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Toll Free: 888-269-3879
Fax: 907-465-2069

May - December:
716 W. 4th Avenue
Anchorage, Alaska 99501
Tel: 907-269-0222
Fax: 907-269-0223

Senator_John_Cowdery@legis.state.ak.us

MEMORANDUM

To: Senator Ralph Seekins
Chair, Senate Judiciary Committee

From: Senator John Cowdery

Date: April 22, 2005

Re: Request for Hearing, SB 165, "An Act relating to card rooms and card operations."

I respectfully request that SB 165, "An Act relating to card rooms and card operations." be scheduled for a hearing at your earliest convenience. I have attached the following for your information:

1. Sponsor Statement
2. SB 165
3. Legal Services Opinion
4. Legal Opinion (Donald C. Mitchell)
5. 25 USC § 2710 (Indian Gaming Regulation)
6. Possible gross sales & employee information for card room operations
7. Letters of Support

If you have any questions please feel free to contact me personally, or my staff, Ryan Makinster, at 3879. Thank you for your time and consideration.

SENATOR
JOHN J. COWDERY

Anchorage

Committees

Chair: Rules

Chair: World Trade &
State/Federal Relations

Vice-Chair: Transportation
Legislative Council



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Senator_John_Cowdery@legis.state.ak.us

SB 165 – An Act Relating to Card Rooms and Card Operations Sponsor Statement

Currently the citizens of Alaska can wager on poker, rummy, bridge, cribbage and many other card games at home without being in violation of the law. The intent of SB 165 is to allow these same social games to also be played in a tightly controlled public environment.

The growing popularity of poker is obvious to anyone who has recently turned on his or her television. Many networks, from ESPN to the Travel Channel, are regularly televising Texas Hold 'em tournaments and enjoying sky rocketing ratings and subsequent advertising revenues. Men, woman, old and young are all joining the "poker" trend, which shows no signs of slowing.

As this popularity continues those seeking poker games will consistently seek out games legitimate or not. The state of Alaska is in the perfect situation to address the trend and bring this popular pastime into compliance with the safety and revenue laws of the state.

Under SB 165 card rooms would be limited to boroughs with a population of 30,000 or more unless a smaller borough votes to allow a card room. A maximum of three card rooms would be permitted under this act. These card rooms would also be limited to players 21 years of age or older and would only offer non-banked card games such as poker, cribbage, rummy, etc.

In addition to the taxable revenue generated by the card rooms, e.g. food and drink purchases and table charges, the establishments would also pay \$10,000 per table yearly to the state and would be required to hold quarterly tournaments to benefit a non-profit educational institution or group.

As part of the licensing procedure the card room operators would also be responsible for covering the administrative cost of licensing and subsequent enforcement through a \$25,000 application fee.

In addition to the revenue and job creation, regulated card rooms would fill one very necessary function in a society that embraces poker and other non banked card games; it allows for players to enjoy their hobby in a safe regulated environment rather than playing in an unsavory, and often unsafe "back room". Currently many players, in addition to their friendly home game, play in underground games where the "house" takes in large profits with little assurance of "fair" play. Although not an everyday occurrence, players at these games have in the past been held up at gunpoint with little recourse because of the shady and illegal nature of the game.

By recognizing this trend and the fact that we already allow this type gaming in our homes, Alaska can address the issue head on and make card games a legitimate, safe, social activity that will increase revenue and job opportunities while minimizing the negative effects of underground gambling.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 165 (L&C)
 (S) Publish Date: 4/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
 Title Card Rooms & Operations RDU Treasury and Tax
 Component Tax Division
 Sponsor Senator Cowdery
 Requester (S) L&C Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES	*	*	*	*	*	*
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CHANGE IN REVENUES ()	*	*	*	*	*	*
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 (see attached)

Prepared by: Larry Meyers & Brett Fried Phone 465-2320
 Division Tax Division Date/Time 4/18/05 4:15 PM
 Approved by: Tom Boutin, Deputy Commissioner Date 4/18/2005
 Agency Revenue

FISCAL NOTE # 1

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 165 (L&C)

ANALYSIS CONTINUATION

Revenue Discussion

This bill would legalize non-banked card rooms in Alaska, with the caveat that "the total number of owner's licenses issued in a municipality may not exceed the total population of the municipality divided by 30,000". A non-banked card room is one in which players compete against each other rather than against the house and the house has no stake in the outcome of a game. Texas Hold-Em poker is an example of a game that might be played in a non-banked card room. It is not clear if "the most recent federal census information" refers to the Decennial Census or the most recent estimate by the U.S. Bureau of Census for purposes of determining the number of card rooms allowed. We used the April 1, 2000 U.S. Census to determine that a maximum of 13 card rooms would be possible under this bill: 8 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 1 in the Matanuska-Susitna Borough. If we were instead to use the July 1, 2004 annual estimates of population from the Census Bureau, then 15 card rooms would be possible: 9 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 2 in the Matanuska-Susitna Borough. We assume the definition of "municipality" in AS 29.71.800, which includes first-class and home-rule cities and boroughs.

There are three reasons why we did not include a revenue or cost estimate on the front page of this fiscal note. First, the decision to open and operate a card room is a business decision that will be made by potential licensees. Second, under this bill the department is given authority to set many rules and regulations that will affect this business decision. The department will set these rules and regulations after consulting the recommendations made by the advisory board appointed by the governor. Third, the fees imposed on card rooms in different states and localities vary widely and make comparisons to Alaska difficult. For example, the state of Montana charges a processing fee to cover the cost of determining whether to issue a license plus \$250 for the first table and \$500 for each additional table. Washington charges \$3,650 for up to 5 tables and \$1,000 per additional table up to a maximum of 15, plus any investigation costs exceeding the license fees. SB 165 imposes an owner's license fee of \$25,000 to apply for a five-year license plus an annual \$10,000 per table fee. Operators are also responsible for investigation costs that exceed the portion of the \$25,000 fee that is assessed for the investigation, and the department is authorized to set occupational licensing fees.

Based on several assumptions, we estimate that the maximum of 13 card rooms in Alaska would generate about \$2.5 million in fees for the state in the first year. During years 2-5, we estimate the maximum of 13 card rooms in Alaska would generate \$2.1 million in annual fees for the state. These estimates assume that there will be the maximum of 13 card rooms with an average of 15 tables each (15 is the maximum allowed in Washington and in California the average is 14.5). All card rooms are assumed to pay their owner's license fees in the first year and would not transfer ownership over the 5-year license period. These estimates also assume an occupational licensing system similar to Washington, where annual licenses are \$175 initially and \$84 for renewals. We assume that Washington's average of 6.7 gaming employees per table will hold in Alaska and that after the first year, all of the licenses will be renewals. We assume that, like in Washington, all gaming employees will be covered but non-gaming employees such as bartenders will not require licenses. Of course, a significant variable affecting revenues is the actual number of tables any individual card room would have. This is difficult to estimate, as in California non-banked card rooms range from a single table to 243 in the Commerce Casino in Los Angeles with the average being 14.3 tables per card room. One or more very large card rooms in Alaska could significantly boost revenues. California and Washington are useful comparisons because both states have data available specifically for non-banked card rooms.

This bill stipulates that card rooms must hold at least one card tournament per quarter with proceeds donated to a nonprofit group. There are many variables that would help determine tournament proceeds, including the number of card rooms, the number of tables, rules and regulations adopted by the department, and other factors. In Michigan the average Texas Hold-Em tournament generates \$1,099 in profit for charities, with a \$500 per person per day prize limit. Any prize limits in Alaska would be determined by the department and may influence the profitability of tournaments. In an article in the Boston Globe, card tournament supplier Mike Sheehy estimated that "A well-run tournament will attract up to 200 players, each of whom pays a \$100 entrance fee [...] A tournament of that size can offer pots of \$5,000 for the first-place player and a few thousand for the second and third and still generate \$10,000 for the charity after expenses."

Cost Discussion

The costs of implementing this bill are difficult to estimate because we do not know the number nor size of potential card rooms. Given the assumptions in our revenue discussion, we would anticipate \$609,000 in total costs with \$532,000 in personnel costs and related expenditures and \$77,000 in RSAs to Public Safety for fingerprint background checks. The personnel costs are for an Investigator IV, four Investigator III's and an Admin Clerk III. Based on the experience of other states and our own experience, this staff should be sufficient to investigate, license and regulate up to 13 card rooms with an average of 15 tables each. Also having two teams of investigators would ensure that teams could be available during all hours of card room operations (assumed to be 12:00 noon to 2:00 am). If the card rooms are larger on average than the assumed 15 tables we would require additional staff and resources for investigation and regulation. We did not include any additional costs that would be incurred by municipalities as a result of this Bill.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3887 or 465-2450
FAX (907) 465-2029
Mall Stop 3101

State Capitol
Juneau, Alaska 99801-1112
Deliveries to: 129 8th St., Rm. 329

MEMORANDUM

April 21, 2005

SUBJECT: Card Rooms and Indian Gaming (HB 272)
TO: Representative Pete Kott
FROM: Kathryn L. Kurtz *KL*
Legislative Counsel

You asked whether this bill would affect Indian gaming in Alaska. I do not think this bill will open the door to class three gaming.

The federal Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., gives Indian tribes the authority to conduct gaming and gambling on Indian lands. The Indian Gaming Regulatory Act 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;¹ and
- (3) Class III gaming includes casino-type gambling, pari-mutual 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. For example, an Indian tribe seeking to conduct bingo games could choose to do so under the authority of state law or could do

¹ 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.

25 U.S.C. § 2703(b).

Representative Pete Kott

April 21, 2005

Page 2

so separately under a permit from the National Indian Gaming Commission. Class III gaming activities are lawful on Indian lands only if authorized by a tribal ordinance or resolution, the activities are conducted on lands located in a state that permits such gaming for any purpose by any person, organization, or entity, and the activities are conducted in conformance with a tribal-state compact entered into by the tribe and state.

The Act provides a framework for negotiation of a 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.

There has been a good deal of litigation involving the various provisions of the IGRA since its passage. Some of that has involved the definition of "Indian lands." Although Alaska has only one remaining reservation, it is not safe to assume that there are no other "Indian lands" in Alaska. There certainly are parcels that are held in trust by the United States that might qualify for purposes of IGRA.

This underscores the significance of the difference between class II and class III gaming. If the legislature permitted class III gaming in state law, it would pave the way for tribes to conduct class III gaming on Indian lands under federal law. However, HB 272 permits only non-banking card games, specifically poker, pan, rummy, bridge, and cribbage games. Poker falls under IGRA's definition of class II games. 25 C.F.R. 502.3; National Indian Gaming Commission Opinion dated June 17, 1999, Re: Game Classification Opinion - "Poker Club."² House banked card games, such as blackjack and baccarat, as well as player banked games, such as chemin de fer, are class III games, 25 C.F.R. 502.4; National Indian Gaming Commission Bulletin No. 95-1, April 10, 1995, but those types of games are not permitted in card rooms under HB 272.

KLK:med
05-284.med

² According to this National Indian Gaming Commission opinion, "Banking games, as commonly understood and defined in the NIGC regulations, are games in which the banker (usually the house) takes on, that is, competes against, all players, collecting from losers and paying winners. See 25 C.F.R. 502.11(c). Conversely, non-banking card games are games where players play against each other. Poker is the typical example of a non-banking card game." The opinion went on to conclude that the proposed poker club would constitute class II, rather than class III gaming: "[A]s proposed, the players in the Nation's Club would play against each other in a non-banking format, not against the house or other banker. Turning Stone and its dealers would not have an interest, financial or otherwise, in the outcome of any poker game. Thus, the poker games to be played at the Club qualify as non-banking card games."

DONALD C. MITCHELL
Attorney at Law
1336 F Street
Anchorage, Alaska 99501
(907) 276-1681 dcmr@gm@aol.com

April 22, 2005

FACSIMILE TRANSMISSION

TO: Senator Ralph Seekins
Chairman, Committee on the Judiciary
Alaska Senate

FROM: Don Mitchell

SUBJECT: SB 165

Senator Seekins, on Tuesday we chatted briefly about how, if at all, the enactment of SB 165, Senator Cowdery's bill to authorize the operation of card rooms at which poker may be played, might alter the legal situation regarding the ability of Alaska Native groups to circumvent state law by conducting gaming activities pursuant to the federal Indian Gaming Regulatory Act (IGRA).

During that conversation, I indicated that my recollection was that the IGRA classified poker as Class III gaming. Having now checked the statute, I need to stand corrected. Section 4(7)(B) of the IGRA classifies card games such as baccarat and blackjack as Class III gaming. But, in pertinent part, section 4(7)(A)(ii) of the IGRA states:

The term "class II gaming" means card games that are explicitly authorized by the laws of the State, or 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.

As a consequence, for the purposes of the IGRA, poker is Class II, rather than Class III, gaming.

Notwithstanding that correction, I would continue to stand by the opinion I expressed during our conversation that, the more money that might be made from State-authorized gaming, the more likely it is that Alaska Native groups will be motivated to initiate new attempts to persuade, first the National Indian Gaming Commission, and then the federal courts, that they are "Indian tribes" for the purposes of the IGRA and that there are parcels of land in Alaska that are "Indian lands" as the IGRA defines that term on which such tribes may conduct gaming activities.

As I think I also stated, my personal view is that if such litigation is initiated, in the end, the State of Alaska will prevail. But assuming so, that result will take years to bring about, and the law regarding Alaska Native tribal status presently is so muddled that there is a risk that I may be wrong about that.

I hope this correction is helpful. Please let me know if I can be of any additional assistance regarding this subject.

Regards,

A handwritten signature in black ink, consisting of a stylized initial 'A' followed by a long horizontal line.

cc: Ted Popely

-CITE-

25 USC Sec. 2710

01/06/03

-EXPCITE-

TITLE 25 - INDIANS

CHAPTER 29 - INDIAN GAMING REGULATION

-HEAD-

Sec. 2710. Tribal gaming ordinances

-STATUTE-

(a) Jurisdiction over class I and class II gaming activity

(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 chapter.

(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 chapter.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

(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.

§

SB 165 - "An Act relating to card rooms and card operations."

Possible gross sales & employee information for card room operations

\$4 Rake							
Tables	5	10	15	25	50	100	150
\$90/hr avg	\$450.00	\$900.00	\$1,350.00	\$2,250.00	\$4,500.00	\$9,000.00	\$13,500.00
9hrs/day avg table use	\$4,050.00	\$8,100.00	\$12,150.00	\$20,250.00	\$40,500.00	\$81,000.00	\$121,500.00
Yearly Gross Sales*	\$1,478,250.00	\$2,956,500.00	\$4,434,750.00	\$7,391,250.00	\$14,782,500.00	\$29,565,000.00	\$44,347,500.00

*exclusive of non-card game operations

Avg # Employees Per Table	4.5	4.5	4.5	4.5	4.5	4.5	4.5
Total Number of Employees	22.5	45	67.5	112.5	225	450	675

Types of Employees

Dealer (Minimum Wage + Tips)	\$250-300/day *
Cashiers (part-time)	\$10/hr *
Janitorial/Maintenance	\$8/hr *
Security	\$10/hr *
Brushperson	\$10/hr *
Shift Manager	\$45,000/yr *
Card Room Manager	\$65,000/yr *

*Plus Benefits

April 11, 2005

J. PATRICK BEATTIE
10700 PROSPECT DR.
ANCHORAGE, AK 99507

Senator John Cowdery
State Capital Building
Juneau, Ak. 99801

Dear Senator Cowdery

I would like to voice my support for Senate Bill No. 165. As an accountant (now retired) for nearly thirty years, I believe the State should explore all reasonable and responsible avenues to raise state revenues. The legalization of card rooms has been successfully accomplished in other states. Properly regulated, I believe it can provide a proper means of entertainment in a positive environment, while still raising state revenues in a time of decline.

Sincerely,

J Patrick Beattie

E-Mail jpbeattie@griesfamily.com

April 11, 2005

Senator John Cowdery
State Capital Building
Juneau, AK 99801

Dear Senator Cowdery,

I wanted to communicate to you my support of Bill 165 and the effort to legalize card rooms in Alaska. It will provide employment and revenue for the state.

Yours truly,

Hari Z. Regen MD

Hari Z. Regen M.D.

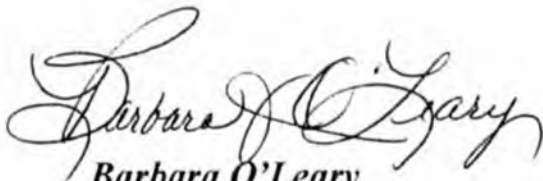
April 9, 2005

*Senator Steve Cowdery
State Capital
Juneau, AK 99801*

Dear Sir;

I was born and raised in Alaska and I am proud to be an Alaskan. I make on average at least four trips a year to Las Vegas to play the tables and the slots. I would love to have the opportunity to play games in my home state and not have to travel to Nevada!

I would like to see card rooms in the state of Alaska, and most especially in my hometown of Anchorage. I say let's keep our dividend dollars at home!



*Barbara O'Leary
PO Box 90402
Anchorage, AK 99509
907-529-4204*

April 9, 2005

To: Senator John Cowdery
State Capital
Juneau Alaska 99801

Please consider providing a card room in Alaska. Poker is big entertainment and could provide a great activity for many.

Brenda O'Connor
7931 E 3rd - 99504

DAMON JORGENSEN
300 Hermit St. #8
Juneau, AK 99801
906/463-4615

April 13, 2005

Senator John Cowdery, Chairman
Senate Rules Committee
State Capitol Building Rm. 101
Juneau, AK 99801-1182

Dear Senator Cowdery:

I would like to write in support of SB 165 regarding the legalization of card rooms in Alaska.

Having observed the increase in the popularity of card games in recent history, it makes sense to allow the state of Alaska to participate in this lucrative pastime. It will bring revenue into the state from the nearly one million tourists who are already visiting Alaska, and will attract visitors who are now spending their money in Nevada and other states that allow this type of gaming.

I just read with interest the article in the Anchorage paper that reported that hundreds of Alaskans in the Mat-Su Valley are currently playing Texas Hold'em weekly for no cash at all. With the popularity of on-line cards games and TV programs relating to poker, now would seem the perfect time for Alaska to become involved with this lucrative pastime.

In addition to the revenue SB 165 would bring to state coffers, I would assume that many jobs would be created by this new industry. With legal card rooms operating, savings could also be realized by communities in which safety officers are currently spending time policing illicit activities which surround illegal card rooms.

Thank you for introducing SB 165 and your support for legal card rooms in Alaska.

Sincerely,



Damon Jorgensen

Ruth Keller

From: ltallman@petzoo.us
Sent: Wednesday, April 13, 2005 9:25 AM
To: Sen. John Cowdery
Subject: Card Rooms In Alaska

Email For: Senator John Cowdery
From: ltallman@petzoo.us
Name: Larry Tallman
Street: PO Box 871865
City: Wasilla
Zip Code: 99687

Subject: Card Rooms In Alaska

Dear Senator Cowdery,
This note is in support of the Card Room initiative for Alaska. Even though I am not a card player (or a gambler of any type) I feel that there is an opportunity here to do the right thing for all concerned. This activity is going on without regard to it's legal basis and bringing it under government control will make it safer and more fair for all participants. My hope is that the legislation passes and Alaskan's will be free to participate in fair and honest card games.

Larry Tallman

Please Add My Email Address to your distribution list. Thank You.

Ruth Keller

From: tyu yui [noahschnitzel@yahoo.com]
Sent: Wednesday, April 13, 2005 9:53 AM
To: Sen. John Cowdery
Subject: card room proposal

Dear Sen. Cowdery,

A friend mentioned to me your proposed bill about card room gaming bill. Initially I wasn't for the full blown casino idea, but card rooms would be something I would enjoy seeing.

Hope you get it passed!

Sincerely,

Tyu Than

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<http://mail.yahoo.com>

4/13/2005

Ruth Keller

From: Kaden Mills [kadenmiriam@yahoo.com]
Sent: Wednesday, April 13, 2005 9:50 AM
To: Sen. John Cowdery
Subject: Card Room Proposal

Senator Cowdery,

Although I am not a gambler myself, I love this bill as it's a chance to get more taxes instead of raising taxes in other areas.

These people will play anyway, why let all those winnings be tax free?

Everybody wins!

Thanks for listening and kudos on the bill.

Kaden Miriam

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around

<http://mail.yahoo.com>

LAW OFFICES
GROSS & BURKE
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April 25, 2005

Perry Green
130 W. 4th Avenue
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Re: Effect of HB 272/SB 165 (Card Rooms) on Indian Gaming in Alaska

Dear Mr. Green:

You have asked what effect, if any, the enactment of HB 272 or SB 165 would have on Indian gaming in Alaska. More specifically, you have asked me to address two questions:

(1) Would the enactment of HB 272 or SB 165 "open the door" to allow Indian tribes in Alaska to operate casino type gaming operations – referred to in the federal Indian Gaming Regulatory Act ("IGRA") as "Class III" games?

The answer is no. As discussed below, all of the card games authorized in HB 272 and SB 165 are Class II games for purposes of IGRA. IGRA authorizes Indian tribes to operate Class III games only if state law does not prohibit them. Alaska law currently prohibits all forms of Class III gaming, and nothing in either bill would authorize Class III games. So long as Alaska law continues to prohibit Class III games, IGRA would not authorize Indian tribes to operate them within Alaska.

(2) Would the enactment of HB 272 or SB 165 "open the door" to additional Class II Indian gaming in Alaska, beyond what is already authorized under existing law?

The answer is no. As discussed below, Alaska currently allows certain organizations and entities to conduct various types of Class II gaming under AS 05.15, including bingo, pull tabs, raffles, lotteries and various lottery type "classics," such as ice classics, rain classics, and salmon classics, among others. In addition, Alaska's criminal code exempts players engaged in social gambling, including players in social card games, from the criminal prohibitions against gambling in the state. Because Alaska currently allows Class II gaming, including card games, IGRA would allow Indian tribes to operate the types of

Class II card games allowed in HB 272 and SB 165 on Indian lands in Alaska – even if neither of those bills were enacted.

I. Brief overview of the Indian Gaming Regulatory Act.

The federal Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. 2701 et seq., provides authority for Indian tribes to conduct certain gaming operations on Indian lands.¹ There are three classes of games under the Act.

Class I games include social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations. Tribes may conduct Class I games on Indian lands without oversight by the Indian Gaming.

Class II games include bingo, lotto, pull-tabs, punch boards, tip jars and non-banking card games. Non-banking card games are games in which only the players may make wagers on the outcome, in contrast to “banked” card games such as blackjack, baccarat and chemin de fer, where the player effectively plays against the house or another banker and the house or banker collects money from losers and pays winners. Indian tribes may conduct Class II games on Indian lands if the tribe adopts an ordinance authorizing the activity and receives a permit from the Indian Gaming Commission. IGRA imposes various regulatory requirements on Class II gaming and restricts the uses of revenues from Class II gaming operations.

Class III games include casino type gambling, electronic or electromechanical facsimiles of any games of chance, slot machines, pari-mutuel horse and dog racing, and all other forms of gaming that are not Class I or Class II. For states located within the federal Ninth Circuit (including Alaska), Indian tribes may conduct a Class III game only if the state permits the particular type of game that the tribe seeks to operate. *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d 1250 (9th Cir. 1995). Class III games, if they are allowed by the state, may be conducted only in conformity with a negotiated tribal-state compact entered into by the tribe and the state.

II. Enactment of HB 272 or SB 165 would not “open the door” to Class III Indian Gaming in Alaska.

HB 272 and SB 165 are identical bills that would authorize, under various limitations, the operation of card rooms in Alaska for the purpose of playing one or more

¹ IGRA restricts Indian gaming to activities conducted on “Indian lands.” This is a significant restriction, and is discussed briefly in Part IV of this opinion, beginning on page 4.

specified "non-banking" card games². The specified games are poker, pan, rummy, bridge and cribbage. Since the only games allowed under the bills are non-banking games, they would be considered as Class II games and not Class III games.

IGRA allows Class III Indian gaming activity only if the activity is "located in a State that permits such gaming for any purpose by any person, organization, or entity." Alaska currently does not permit any type of Class III gaming activity, and nothing in either HB 272 or SB 165 would constitute such permission. Kathryn L. Kurtz, Legislative Counsel, recently provided an opinion to Representative Pete Kott in which she concluded that HB 272 would authorize only Class II games and would therefore not provide a basis for any Class III Indian gaming in Alaska. (Memorandum from Kathryn L. Kurtz to Representative Pete Kott, April 21, 2005.) I agree with her analysis, and rather than repeat it here, I have attached a copy of her opinion to this letter.

III. Authority of Indian Tribes to Conduct Class II Card Games under Existing Alaska Law.

IGRA, in 25 U.S.C. 2710(b)(A), allows an Indian tribe to engage in Class II gaming on Indian lands within the tribe's jurisdiction if

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).

AS 05.15 currently allows charitable organizations and municipalities to conduct certain games that would be included within IGRA's definition of Class II games – specifically, bingo, pull tabs, raffles, lotteries and various lottery type "classics" such as the Nenana Ice Classic. Additionally, Alaska's criminal code exempts from prosecution for gambling offenses "a player in a social game." AS 11.66.200. "Social game" is defined in AS 11.66.280(9) as "gambling in a home where no house player, house bank, or house odds exist and where there is no house income from the operation of the game."

There are two alternative bases for concluding that IGRA would permit Indian tribes to operate the types of card games authorized under HB 272 and SB 165, even if neither bill were enacted. The first is that under the authorizing language quoted above, Alaska allows "such gaming" – that is, Class II gaming – of several types. It does not matter that Class II gaming activity is limited to charitable organizations and municipalities. Alaska need only authorize these games for "any purpose by any person,

² Both bills, at page 2, line 1, make it clear that the specified card games are "non-banking." The Senate Labor & Commerce Committee Substitute for SB 165 contains additional language to further emphasize that only "non-banking" games are allowed. The committee substitute, at page 2, lines 18 and 19, provides that wagers may be made only by a player with respect to his or her own game and that players may not make a wager on behalf of another individual.

organization or entity." As noted above, the Ninth Circuit Court of Appeals has ruled that for a Class III game, IGRA authorizes it only if state law permits the same type of game that the tribe seeks to operate. The Court has indicated however, that for Class II games, a less stringent standard will be applied, and a tribe may operate a Class II game if the state permits any person, organization, or entity to operate any Class II game. See, *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d at 1258 n. 4. Under this analysis, IGRA would authorize Indian tribes to operate Class II card games solely by virtue of current law authorizing charitable organizations and municipalities to operate certain Class II games.

Alternatively, it may be argued that the *Rumsey* analysis should not be applied so broadly where Class II card games are at issue. That is because IGRA makes a distinction in its definition of Class II games between bingo, pull tabs and other bingo-like games on the one hand, and card games on the other. Specifically, IGRA defines Class II card games as games that "are explicitly authorized by the laws of the State" OR that "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." 25 U.S.C. 2703(7)(A)(ii)(I) and (II). Current Alaska law meets that definition.

While current Alaska law does not "explicitly" authorize non-banking card games, it clearly does not "explicitly" prohibit them, because of the exemption in AS 11.66.200(b) from prosecution for players in social games. Moreover, since non-banking gambling is allowed in Alaska by players in homes, existing law allows for gambling on card games "at any location in the State."

Thus, Indian tribes are authorized under IGRA to operate non-banking card games under Alaska law as it exists today. Enactment of either HB 272 or SB 165 would not be required as a prerequisite to that authorization.

IV. Territorial Restrictions on Indian Gaming in Alaska.

Even though IGRA would authorize Indian tribes to conduct Class II card games in Alaska under existing state laws, there are additional restrictions in IGRA that may serve to minimize the proliferation of such gaming in Alaska. Indian tribes may conduct Class II and Class III gaming operations only on "Indian lands." Indian lands are defined in IGRA, 25 U.S.C. 2703(4), as:

(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

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United States against alienation and over which an Indian tribe exercises governmental power.

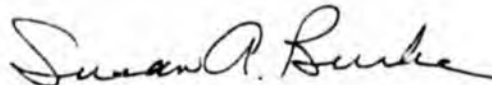
In Alaska, the only lands within an Indian reservation are those within the Metlakatla reservation. The Alaska Native Claims Settlement Act revoked all other reserves set aside for Native use and lands conveyed to regional and village Native corporations are held in fee simple by each corporation. Native corporation lands, then, do not fall within the definition of "Indian lands" because they are not within an Indian reservation, they are not held in trust by the United States, and they are not subject to any restrictions on alienation or sale.

Another category of lands that arguably might constitute "Indian lands" are various Alaska village town sites. While these lands were at one time held in trust, they have since been re-conveyed to the villages in fee simple and are now free of any price restrictions on the sale of these lands. As a result, village town sites would not qualify as "Indian lands" for purposes of IGRA.

The last category of lands that may constitute "Indian lands" under IGRA are individual Native allotments. There are a number of parcels of land in this category scattered all over the state, and most, if not all, are held by individual Natives and are subject to federal restrictions against alienation. Thus, Native allotments would likely meet two of the three requirements needed to qualify as "Indian lands." What is less clear is whether Native allotments would meet the third requirement that the Tribe must "exercise governmental power" over the lands. This is a complex issue, however, and the result would depend on the facts surrounding the particular parcel in question and the extent to which a recognized tribe actually exercises any governmental powers within the boundaries of that particular parcel.

Please let me know if you have additional questions.

Very truly yours,



Susan A. Burke

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Enclosure