

Obama Officials Promise Scrutiny Of Tribal Casino Revenue Deals

11 Jan, 2012

«[Previous](#) [Next](#)»

[Dave Palermo, Gambling Compliance](#)

In the wake of a recent court ruling involving a California Indian tribe, Department of Interior officials have pledged to scrutinize future tribal-state gambling agreements with revenue sharing clauses to ensure they do not violate tax provisions of federal law.

"The state has to make a meaningful concession to the tribes to [justify] revenue sharing," Bryan Newland, senior policy adviser for the Department of Interior's Bureau of Indian Affairs, told attendees at last week's National Council of Legislators from Gaming States (NCLGS) conference in Las Vegas.

"Going forward, we're going to continue to scrutinize revenue sharing provisions in tribal-state compacts."

The U.S. Supreme Court last year upheld a [9th Circuit Court of Appeals ruling that former Governor Arnold Schwarzenegger negotiated in "bad faith"](#) in demanding that the Rincon Band of Luiseño Indians pay a portion of its gambling revenue to the state general fund in exchange for additional slot machines for its Harrah's Rincon casino.

The court ruled the payments constituted a tax in violation of the Indian Gaming Regulatory Act (IGRA) of 1988. Jurists said the money should instead go to local governments to mitigate environmental, traffic, law enforcement and other casino impacts.

"States cannot demand payments beyond the actual costs of regulation and mitigation of local impacts," Rincon attorney Scott Crowell said. "If they demand anything beyond that, it's an illegal tax under IGRA."

"The [Rincon] decision will have [substantial effects nationwide](#) on how states negotiate future compacts and what states can legally ask tribes to pay for," California Sen. Tom Harman told conference attendees.

Ten of 28 states with Indian government casinos require that tribes pay a portion of gambling revenue to the state beyond what it costs to regulate casinos and mitigate impacts on local governments.

But NCLGS panelists said the Rincon ruling will put legal weight behind IGRA provisions that the bulk of Indian gambling revenues should go to tribes and local governments.

The Department of Interior is willing to approve tribal-state compacts with revenue sharing provisions as long as tribes receive a "substantial benefit" in exchange for the payments, which are permissible under IGRA, Newland said. In many states the benefit is the exclusive right to operate casinos.

But tribal casino exclusivity in California is guaranteed in the state constitution, limiting exclusivity as a tool in **negotiations between the state and 67 tribes with ratified compacts.**

California has the largest state-wide tribal gambling in the country, with tribal winnings at about \$7bn a year.

In renegotiating 1999 compacts and new agreements, Schwarzenegger demanded tribes pay their "fair share" to help alleviate a state budget deficit. Fifteen tribes currently pay \$320m a year into the state general fund in exchange for the right to operate additional slot machines over the 2,000 limit in the 1999 compacts.

But the policy violated IGRA principles.

"The primary beneficiary of Indian gaming under IGRA was supposed to be Indian tribes, not the states," said Mark Van Norman, senior adviser to the National Indian Gaming Association.

"Tribal casino revenue is intended to fund tribal services, programs and provide schools, health care, water and sewer services, fire ... and very important cultural renewal."

Jacob Appelsmith, consultant on Indian issues to California Governor Jerry Brown, said the administration will not continue the Schwarzenegger policy of seeking tribal revenue to alleviate a budget deficit.

"The governor and I have said, for several years now ... we believe the best policy for tribal gaming revenue is that the primary beneficiary would be the tribes, but the beneficiary along with them should really be local people," Appelsmith said. "That's the counties; that's the cities."

Although the Rincon decision will not set a legal precedence for other states, it will give the Department of Interior a strong legal position in ruling on the legality of revenue sharing in future compacts.

"This issue is cropping up in several places," Crowell said.

Since IGRA was enacted the Department of Interior has only disapproved six of hundreds of tribal-state compacts submitted for review, Newland said.

During the George W. Bush administration, from 2000 to 2009, the Department of Interior and the Bureau of Indian Affairs "effectively abdicated

its oversight role," Newland said, approving or taking no action on tribal-state compacts submitted for its review.

"During that period tribal revenue sharing steadily crept upward," Newland said, a trend that came to a halt under President Obama appointee Assistant Secretary Larry Echo Hawk.

"When we came into office two years ago we said that was going to change," Newland said, and the department has rejected a handful of compacts, largely because of revenue sharing clauses.

IGRA intended that compact negotiations strike a balance between tribal, state and local government interests, panelists said.

"The majority of the compacts reflect tribal-state cooperation," Newland said.

Tribal government gambling is responsible for 600,000 direct and indirect jobs, Van Norman said, most of which are held by non-Indians.

Tribal casinos also generate \$9.4bn a year in federal taxes and \$2.4bn in state taxes and revenue sharing payments.

"When we look at the structure there is always a benefit to the states built in," Van Norman said.

"There's great flexibility in the structure. There's protection for tribal rights, but there's flexibility to deal with the impacts on state and local governments."