

Op-Ed/Editorials - Tribes Given Chance To Open Class II Casinos

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NOTE: I have worked on behalf of tribes as a consultant and expert witness in the case I am about to discuss and related cases. I bring this to the reader's attention in the spirit of full disclosure. I have no financial stake in the outcome of these legal battles. However, because I have been working on the Indian side of these fights for so long, it is possible that I am dismissing the U.S. government's position too lightly.

A federal court has given tribes the opportunity to set up gaming devices that play a lot like slot machines, even in states which refuse to negotiate tribal-state compacts.

The Ninth Circuit Court of Appeals, which covers most of the western United States, has ruled that linked, fast action, video bingo games are legally "bingo" under the Indian Gaming Regulatory Act ("IGRA"). Bingo is a Class II game under IGRA, meaning tribes in any state are free to set up as many of these machines as they want, so long as the state allows charities to run bingo games.

Class II games do not require tribal-state compacts. In fact, unless the tribes voluntarily agree to let the state in, state officials will have no role in regulating these gaming devices. Other cases involving similar issues are being heard in courts in other parts of the country. It is possible that another circuit will decide that these gaming devices are not "bingo." The U.S. Supreme Court will then be called upon to decide the issue. I doubt that we will ever see the Chief Justice of the United States, or any other member of the High Court, write a formal opinion on the definition of "bingo."

Some courts are notoriously anti-Indian. So, it is possible that tribes will lose the right to operate

linked bingo machines in one part of the country, while they can run them everywhere else.

The particular video game involved is MegaMania, although similar gaming devices are manufactured by other suppliers. MegaMania lets players purchase up to four bingo cards at 25 cents per card. Players play against each other to get a five-across bingo, with a potential jackpot of \$5,000. At the same time, they are playing "CornerMania": each player who covers two, three or four corners wins a smaller cash prize. Numbers are drawn in set of three. After each set, players must pay an additional quarter for each card they want to continue playing.

Multimedia Games, the developer of MegaMania, spent years refining the game. Some of the company's efforts were put into making sure that the game met the legal definition of bingo.

Although players do not have to be in the same room, or even the same state, the game cannot begin until at least 12 players have bought a minimum of 48 cards.

Multimedia Games also modified the game a number of times to comply with the sometimes unreasonable demands of the federal government. For example, even though IGRA explicitly allows random number generators, the U.S. Attorneys required that numbers be drawn from a bingo blower. So, some unfortunate souls are forced to sit in a closed and guarded room all day, punching into a computer the numbers they have read off of numbered ping-pong balls.

IGRA clearly states that a bingo game is "won by the first person covering a previously designated arrangement of numbers or designations" on his or her bingo card. But the government wanted the winner to somehow shout "Bingo!" So the devices have a "daub" button, that must be pressed by players to cover numbers on their cards as they are drawn and to declare they have a bingo. The

buttons work. Players have lost with "sleepers" when they failed to press the daub button before the next three numbers were drawn and someone else claimed the jackpot.

The decision does not necessarily mean that linked video bingo machines will be showing up soon in charity bingo halls across the nation. Some states have statutes or regulations that define bingo in ways that would prohibit these games. The biggest barrier will be laws that limit charities to a limited number of "sessions" per night and jackpots of no more than \$250.

But tribes have a golden opportunity. In Idaho, for example, the Coeur d'Alene Tribe and the state have agreed to let a court decide whether the state has to sign a compact to allow Class III gaming devices. The Tribe will probably lose, because the state amended its constitution to specifically prevent its tribes from operating casino games. But MegaMania is not a Class III slot machine. It is bingo, by federal law, and there is nothing the state can do about it.

The Court's ruling will be useful even in states like California, where tribes have the right to operate slot machines. Gov. Davis put a cap on the number of slot machines that any one tribe could have, and another, lower, maximum on the total number of tribal slot machines allowed in the state. But MegaMania machines are not covered by the compact.

How long will this opportunity last? The Ninth based its decision entirely upon the wording of IGRA. This is merely a statute. So the definition of "bingo" can be changed at any time by a vote of Congress.

It is now up to the tribes to play the political game of lobbying to preserve their right to operate bingo machines.