

Op-Ed/Editorials - Indian Nations and Internet Gambling

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Cutting edge developments in gambling law are coming from North America's oldest cultures and the world's newest technologies.

Can Indian tribes run online lotteries, bingo and casinos? Can they license non-Indians to operate gambling sites on the Internet?

This is not merely a hypothetical legal question.

In 1997, the Coeur d'Alene tribe in Idaho set up the first Internet Indian lottery, accepting bets from anyone located in a state with a state lottery. Non-Indian companies spent millions of dollars setting up the "US Lottery," but its computers were always on tribal land. The tribe shut down the lottery, at least temporarily, after losing court cases in Missouri and Idaho.

In August 1999, Atlantic International Entertainment, Ltd., issued a press release, announcing it had "entered into a license agreement with the Michigan-based Lac Vieux Desert Band of Lake Superior Tribe of Chippewa (LVD) Indians for its Internet-based Bingo System, Bingo Blast. The LVD Tribe is a licensed, controlled and regulated Internet on-line Bingo Operator." The press release does not state who is issuing the license, let alone who is controlling and regulating this operator.

On June 9, 1999, Richard Williams, Chairman of this tribe, testified before the U.S. Senate Committee on Indian Affairs. He described how the Internet bingo game was played at that time: Anyone who wanted to participate could log on from their home computer. Proxies - he called them "holders" - would do the actual buying and playing of bingo cards at a tribal bingo hall.

Williams said that this made the game bingo, a Class II game under the Indian Gaming Regulatory Act (IGRA). IGRA allows Class II games to be linked via

computers across state lines. He pointed out that the Coeur d'Alene's lottery was a Class III game.

In July, 1999, the Kahnawake tribe of Mohawk Indians near Montreal passed legislation allowing private operators to obtain licenses from the tribe to operate online casinos, for an annual payment of \$C10,000. The tribe modeled its law after Internet gambling legislation from Queensland, Australia.

As this is being written, ten gambling websites are operating under licenses issued by this tribe.

The Ochapowace Band in Saskatchewan, Canada, is running the White Buffalo Casino. (Technically this online casino is owned by Axxis, a wholly owned corporation of the tribe.)

But even here, the tribe is adding an extra layer of legal protection, by saying that it is licensed by Antigua. A notice can be found on the website stating that "White Buffalo Casino licenses its casino software from an international company that is itself licensed and regulated by the government of Antigua. The company operates, manages and controls the casino software while the tribe owns the corporation."

The question whether Indian tribes can operate, or license non-Indians to operate, Internet gambling, goes to the heart of the emotion-laden question of whether tribes are sovereigns. In Canada, tribes prefer being called First Nations, which succinctly sums up the legal quandary.

When countries were ruled by kings, it was easy to see whether an individual was a sovereign. According to Black's Law Dictionary, a sovereign is "A person, body, or state in which independent and supreme authority is vested."

The problem for federal systems like the U.S. and Canada, is that there are multiple layers of government.

Tribes clearly are sovereigns to the extent they can exercise independent power over their land and people found within their borders. States in the United States and provinces in Canada are sovereigns in the same way. But for states and provinces, as well as tribes, the federal governments are supreme.

Until recently, tribes in the U.S. had a stronger legal argument that they were sovereigns than did First Nations in Canada. The U.S. Constitution states (with its original capitalization): "The Congress shall have Power... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

Most legal experts looked at this language and assumed that the U.S. Supreme Court meant what is said in the famous case of Worcester v. Georgia in 1832, that tribes in the U.S. were nations.

In 1998, the high Court made a startling ruling in *Kiowa Tribe of Oklahoma v. Manufacturing Technologies*: The doctrine of tribal sovereign immunity "developed almost by accident," and was only created in the 20th century.

In Canada, the legal picture is even bleaker: Statutes describing tribal powers look more like zoning laws than the laws of nations; including, for example, the power to regulate bee-keeping.

But there is law, and then there is politics. In Canada, the Federal Government has rightly stepped aside and left the question of First Nation's gaming up to the provinces. Legally, the provinces probably did not even have to negotiate with Indian bands located within their borders. But as one high-ranking Canadian government official told me, "We're not like the U.S. Here we always compromise on everything."

The result is that Canadian provinces are entering into agreements to allow First Nations to set up casinos. Although the Attorneys General of Canada and Quebec have declared the Kahnawake's licensing operation illegal, I predict the provincial government will eventually reach an agreement with the tribe and the federal government will not interfere.

But in the U.S., government officials, particularly law enforcement, will fight any form of gambling they think is illegal, even when they are wrong. So American tribes are going to have to continue to fight in courtrooms and in the halls of Congress for the right to offer online gaming.