

Op-Ed/Editorials - Indian Nations and Internet Gambling

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Federal v. State Governments

Internet gambling is exposing inherent weaknesses in some of the world's largest governments; conflicts that cannot ever be completely resolved.

In the old, old days (around 1996), it looked like the Great Divide was between the large countries in the Northern Hemisphere, and everyone else. The United States Congress was considering bills which would have made even making a bet online a crime, while island nations and states south of the Equator were issuing licenses.

By 1998, the U.S. appeared to be standing alone. Proposals in Congress to outlaw Internet gambling were modified to be a little more realistic: bettors would no longer fear the police knocking down their doors, but operators might not be able to accept credit cards.

Meanwhile, more than 50 jurisdictions — tribes, states, territories and relatively smaller countries — were either authorizing or operating gambling websites.

Today, the fight is between federal governments and smaller governmental bodies. The national legislatures of the United States and Australia are trying to impose a go-slow attitude. States, on the other hand, are rushing to either prohibit or legalize gaming websites. Some are trying to do both: prohibiting Internet gambling for everyone except their own state-licensed gaming operators. At least one city considered trying to grab a piece of the virtual pie: The Las Vegas City Council debated licensing the city's name for use on an Australian-based Internet casino, VegasOne.com.

The City Council was told this online casino might have an annual net win of \$360 million by the year 2003, giving the city about \$90 million a year - a lot of money,

considering Las Vegas has an annual budget of only \$320 million. Of course, the project's advocate believes this single site could grab 10% of the entire world market in just two years.

Nevada, Louisiana, Michigan, Illinois and South Dakota have passed laws outlawing Internet gambling, while similar bills are pending in many other state legislatures. But most of these laws contain significant loopholes, allowing legal local operators to take bets online.

Even the most broadly worded ban is often worded in such a way as to actually legalize Internet gambling for a select few.

The South Dakota Legislature, for example, passed a bill which the Governor signed, entitled "An Act to Prohibit the Use of the Internet for Certain Gambling Activities." The new law makes it a felony for a person engaged in a gambling business to use the Internet to make or accept wagers. However the statute specifically exempts the State Lottery and licensed casinos in Deadwood.

State anti-Internet gambling laws take one of two courses: They all start as sweeping restrictions on every form of online betting. The current trend is to prohibit the use of credit cards and electronic funds. If these proposals can be formally adopted quickly enough, as is the case with Attorney General Opinions, they contain no loopholes.

But some proposals are subjected to months of hearings and amendments. Many of the proposed prohibitions use language so broad that they would outlaw existing legal gaming, for example by outlawing all uses of computers. Lobbyists for legal gambling operations like state lotteries and parimutuel racing have no choice but to ask legislatures to carve out exceptions for their clients.

Federations (governments of governments), on the other hand, are trying to stop the entire political process while they consider the issue. But, while federal governments have great power, states have almost always been the chief guardians of morality, including the control of gambling.

States have what is known as "Police Power," the right to protect citizen's health, safety and welfare.

Police power is a power virtually without limits. But, federal governments sometimes forget that they only have the power given them by the states that

created them.

The result is constant tension and endless disputes over who has the final say.

This would not be a problem if everyone agreed on the solution for any particular political problem. But, as the fight over Internet gambling shows, a state may want to do something that is completely opposite the wishes of its federal government.

In Australia, the Commonwealth government first imposed a moratorium and then a partial ban on state Internet gambling licenses. It has never been clearly explained exactly how this federal government can stretch its power over communications to overrule the states when it comes to the control of gambling. Nations that joined the European Union agreed that they would not keep out the goods and services of other nations of the EU. But, the European Court of Justice has consistently ruled that member states of the EU do not have to allow in legal gambling from other members. Gambling is one of the unique areas where local customs and morals trumps the law of this new federation.

The United States, the oldest constitutional federation in the world, may be the ultimate test. When states like Nevada decide to allow limited gambling on the Internet, wagers not to cross state lines, the federal government simply does not have the power to interfere.

And now that the State of Nevada, through its Legislature and Governor, has approved its licensees to take bets from states where making a bet is legal, what right does the federal government have to tell it "No"?