

REPORT TO THE LEGISLATURE ON
THE STATUS OF
INDIAN GAMING
IN MINNESOTA

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Submitted by: Governor Arne H. Carlson
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Tribal-State Compact Negotiating Committee:

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I INTRODUCTION.

This report is submitted pursuant to the statutory charge for the Governor, the Attorney General and the Governor's designees to report to the House and Senate committees having jurisdiction over gaming regulation on negotiations and prospective negotiations by the Tribal-State Compact Negotiating Committee ("Committee"). The report consists of two parts: (1) a summary of the negotiations taking place between the Committee and Indian tribes during the last year and (2) a brief discussion of the status of Indian gaming.

II TRIBAL-STATE COMPACT NEGOTIATING COMMITTEE MEETINGS AND DISCUSSIONS.

During calendar year 1992, the Committee met on four occasions. Two negotiation requests were made during the year. First, the Red Lake Band of Chippewa requested negotiations to amend its Tribal-State Compact to allow gaming on tribal land located away from its tribal land in Warroad. Second, the Lower Sioux Community requested that the Committee negotiate for a compact to govern the conduct of keno despite the fact that some tribes considered keno a Class II game which could be conducted without the necessity of a compact.^{1/} Since the National Indian Gaming Commission promulgated rules defining keno as Class III, Minnesota Indian tribes no longer conduct the game at casinos.

^{1/} Federal law defines Class I gaming as social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations. Class II gaming is bingo, pull-tabs, lotto, punch boards, tip jars, instant bingo and other games similar to bingo. It also includes card games explicitly authorized by the laws of the state, or which are not explicitly prohibited but only if played within the state laws and regulations. Class II gaming does not include any banking card games, including baccarat, chemin de fer, blackjack or slot machines. Class III gaming is defined as all forms of gambling that are not Class I or Class II gaming. 25 U.S.C. § 2703. Tribes are required to negotiate a compact with the state to conduct Class III gaming.

A. Red Lake Band Compact Amendment Request.

The Red Lake Band of Chippewa ("Red Lake Band") initially did not negotiate a compact with the state as required under the Indian Gaming Regulatory Act of 1988 ("IGRA"). IGRA became law in October 1988 and provides the statutory basis for the operation of gaming by Indian tribes. Specifically, IGRA requires the tribes and the state to negotiate compacts governing Class III, casino-type gaming on Indian land. Rather than negotiate, the Red Lake Band sued the United States in federal court alleging, among other things, that IGRA violated the sovereign prerogatives of the Red Lake Band, violated Federal Trust Responsibilities and guardianship duties and violated the Indian Self-Determination Act. The Red Lake Band sought injunctive and declaratory relief.

The case was ultimately dismissed and the Red Lake Band then negotiated with the state for compacts relating to video games of chance and blackjack. The Band executed the compacts on May 6, 1991 and June 11, 1992 respectively. These compacts limited the land on which gaming could be conducted to only reservation land located in Warroad, Minnesota. This provision was included despite the fact that the Red Lake Band has a "checkerboard reservation" with land at a number of different locations throughout the state. In virtually all other compacts, the definition of "Indian land" allows for gaming on any reservation land, which in the Red Lake Band case, could have included a number of different parcels throughout Minnesota.

In March, 1992, the Red Lake Band requested negotiations to amend the compacts to include the general definition of "Indian land" so it could conduct gaming on all of the Red Lake Band's reservation. Unlike most Minnesota Indian reservations which have one parcel of land, the Red Lake Band has a large number of smaller unconnected parcels throughout the state. Consequently, most Minnesota Indian reservations are limited to building casinos only at one location under the general definition of "Indian land" whereas the Red Lake Band could construct any number of casinos on its reservation land throughout the state under the same definition. The Committee was unwilling to amend the compact in this way because of this

possibility. However, the Committee and the Red Lake Band were able to negotiate a compromise allowing gaming on "four or fewer locations within the reservation." As a result, rather than amending the compact to allow for any number of casinos throughout the state on the Red Lake Band's reservation, the Red Lake Band is limited to only four casinos. The amendment was executed by the Governor on June 30, 1992 and by the Chairman of the Red Lake Band, Gerald F. Brun, on July 9, 1992, thus concluding these negotiations.

B. Keno Request.

Legal counsel for the Lower Sioux Indian Community of Minnesota ("Lower Sioux") forwarded a letter dated April 28, 1992 to the Committee requesting a meeting to discuss terms of a tribal-state compact that would permit the Lower Sioux to conduct keno at its casino, Jackpot Junction. There is some dispute as to whether keno is a Class II game or Class III game. Indian tribes can conduct Class II gaming such as pull-tabs and bingo without a compact under the jurisdiction of the National Indian Gaming Commission. Class III gaming such as slots, blackjack and other casino-type games requires a tribal-state compact governing the conduct of the game. The federal agency with jurisdiction in this area, the National Indian Gaming Commission, proposed rules classifying keno as a Class III game requiring a compact; however, the rules were not finally promulgated until one month after the Lower Sioux request.

Immediately after the rules became effective, the Shakopee Mdewakanton Sioux challenged the rule relating to keno in federal court. The Lower Sioux Community joined in the suit. The federal court ruled against the tribe and in favor of the National Indian Gaming Commission upholding the rule classifying keno as Class III gaming. The case was appealed to the Eighth Circuit of the United States Court of Appeals and briefs were filed the week of November 16, 1992. Pending a final decision in this case, the Lower Sioux decided to forego negotiations regarding keno. The Lower Sioux may request to continue negotiations depending on the outcome of the case.

C. Prospective Negotiations.

At present there are no issues formally before the Committee requiring negotiation.

III. STATUS OF INDIAN GAMING.

Following is a brief background of the size and prevalence of Indian gaming on both a national and state level.

A. National Indian Gaming.

Virtually all states with Indian tribes presently have Class II Indian gaming conducted within their boundaries. The United States Department of Interior provided information that as of November 30, 1992, 15 states have negotiated compacts with 48 tribes for the conduct of Class III gaming. Sixty-one compacts have been executed, and the number is steadily increasing as more compacts are being submitted for approval by the Department of Interior each month. These compacts authorize various forms of Class III gaming, some allowing only video games of chance or blackjack and others allowing full-fledged casino gambling.

B. Status of Indian Gaming in Minnesota.

Presently, there are 11 tribes conducting blackjack and video games of chance at 16 locations in Minnesota pursuant to compacts negotiated and executed by the state and each tribe. Among these 16 casinos, tribes are operating approximately 9,200 video slot machines and 371 blackjack tables. It is estimated that an amount approaching \$2 billion will be wagered in casinos on Indian reservations during calendar year 1992.

A new casino is being built near Cloquet and is expected to open soon. This casino, the Big Bear Casino, is located on the Fond du Lac Reservation. Mystic Lake Casino near Shakopee plans on expanding its facility although the time of the expansion is not yet determined. The Red Lake Band recently opened the River Road Casino, the sixteenth casino in Minnesota. This casino is located near Thief River Falls. Casino facilities seem to be expanding rapidly to take advantage of the present popularity of gaming.

IV. CONCLUSION.

This report was submitted to update individual committee members and other interested parties. Casino gaming on Indian tribal land has become big business and continues to grow.

Within the constraints of the various treaties and the Federal Indian Gaming Regulatory Act, the state should continue to monitor these gaming activities and mitigate the problems they create. The Compact Negotiating Committee will continue to serve as an interface with representatives of tribes. We hope this report is helpful in describing both the Committee's work over the last year and the ever expanding Indian gaming industry.