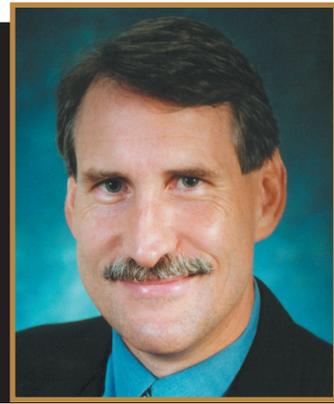


# California Dreamin'?

*Tribes need to take the lead and strengthen gaming's regulatory process*

John Maloney



As a nation, the state of California would be one of the largest economies in the world. The rest of the United States looks to California as a leader in diversity, emerging technology and entertainment. Tourism is one of the leading industries in California, and people from all over the world flock there to experience what the state has to offer. The state has always been a leader in adopting new legislation to keep up with an ever changing populace. However, unlike its sister state and despite the fact that gaming has existed in California since the 1850s, it has been slow to adopt a credible regulatory process, even in light of the fact that California will soon be the largest gaming venue in North America.

The newspaper headlines today are full of stories about whether the tribes in California will contribute to the state coffers by way of a tax on gaming revenues generated by tribal gaming casinos. The reward for such generosity would be to allow the tribes to increase the number of Class III gaming devices beyond 2,000. The only focus in the headlines is how the state of California can be monetarily compensated from the gaming revenues generated by the tribal casinos. The real issue is the strength of the regulatory process and ongoing maintenance of this system.

It appears California has learned nothing from the checkered history of Nevada, its immediate neighbor to the east, in gaming regulatory oversight. If generating revenues from casinos was the only issue Nevada cared to address, the mob would still own the casinos in Nevada and the state would receive its gaming taxes—albeit not all of the taxes. It is shameful that so few state policy lawmakers are looking to preserve the integrity of the gaming industry in California. The politicians know nothing about gaming except that their reelection funds are generated from tribal casinos. The whole gaming industry is affected by what happens in California, but state policy lawmakers are not minding the shop in California.

Under the tribal gaming compacts, while the tribes have the primary regulatory responsibility, the state still has a key oversight role. From a practical point of

view, why don't we look at how regulatory oversight occurs in California?

Vendors who wish to do business with the tribes send out a notification to the California Gambling Control Commission notifying it they want to be on an approved list of gaming vendors. The Commission will send back a letter notifying the vendors they are on the approved list, this with no investigation being conducted by the Department of Justice. The vendors will then go out and contact various tribes, determining the level of interest by the tribes. In some situations, if the level of interest from the tribes is high, a gaming application will be filled out by the vendor and an approval from the tribal gaming agency will immediately be forthcoming. The immediate approval is not predicated upon the vendor being a vendor of good reputation, but instead upon commercial reasons. This process allows immediate access to the very lucrative tribal gaming casinos in California.

Once the DOJ creates an efficient regulatory infrastructure, the regulatory oversight of tribal gaming in California, at least on paper, will resemble a highly regulated gaming jurisdiction. Tribal gaming agencies, while conducting their own investigations with limited resources, will be able to rely on the DOJ to conduct more thorough investigations on vendors and other entities as outlined in the tribal gaming compact.

Please note that if the DOJ is satisfied that the investigations on vendors by tribal gaming agencies are adequate, follow-up investigations are not necessary. If it can be demonstrated that due diligence investigations conducted by tribal gaming agencies are sufficient, possible encroachment on sovereign immunity will not become an issue. With limited resources, how can this be accomplished? This can be accomplished through implementation of a thorough gaming compliance program that helps ensure transparency and demonstrates to the rest of the gaming world tribal gaming agencies are proactively protecting the gaming industry and at the same time ensuring tribal sovereign immunity is maintained.

As it stands today, the tribes must be able to demonstrate that they are capable of protecting tribal gaming industry in California. This in turn maintains the gaming industry

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as a whole, gives other gaming regulatory bodies outside of California the comfort level they are seeking and does not create a vacuum for unsavory groups to attack the tribal gaming market in California.

With the absence of current meaningful state regulatory oversight, the tribes have a unique opportunity to create regulatory policies as stringent as is found in commercial gaming jurisdictions. It is possible the tribes can demonstrate to the DOJ and the Commission they are proactively looking at their interests through such steps as comprehensive compliance programs and bolster their arguments about limiting state involvement.

While a few tribal gaming agencies in California might be able to make the argument they are effectively regulating gaming, unfortunately this is a strong minority. The time is for the tribes to step up, set an example for the rest of the gaming industry and proactively demonstrate their transparency. In the end, this will earn them the respect of other gaming regulatory bodies and can even ensure there is no encroachment, perceived or otherwise, upon sovereign immunity. □

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