



STATE OF ARIZONA  
EXECUTIVE OFFICE

FIFE SYMINGTON  
Governor

MEMORANDUM

TO: GOVERNOR SYMINGTON

FROM: JOHN B. KELLY

RE: INDIAN GAMING LEGISLATION

DATE: JULY 29, 1994

Despite what you may have read in the Arizona Republic, Indian Gaming legislation is not dead. However, the draft initially introduced by Sens. Inouye and McCain will be substantially revised. In the meantime, in response to the original draft, Lisa Hauser prepared testimony for you to submit for the record of the hearing. To summarize the points of the letter:

The proposed legislation goes along way to address concerns of the state of Arizona regarding many issues. Arizona associates itself with the position taken by NGA and NAAG regarding strengths of the weaknesses of the proposal. However, Arizona has specific concerns related to the status and structure of compacts in our state, as well as particulars of state law, that require clarification and resolution.

Concerns:

- I. The effect of the legislation on existing compacts. The legislation should allow Arizona to keep our state regulatory structure, and not be preempted by the new proposed federal regulatory structure.
  - Arizona does support the establishment of minimum standards based on Nevada and New Jersey practices (which we have emulated).
  - Clarification of section 10 of the proposed legislation is imperative. That section indicates that requests for changes in compacts would be subject to the new negotiating and mediation procedures outlined in the legislation for new compacts. Our desire is to protect our existing compact structure, which includes procedures for dealing with change requests.
  - Clarify language in which the National Indian Gaming Commission is said to have "exclusive authority" for the regulatory role. This is clearly inconsistent with the stated intent.

II. Language dealing with scope of gaming is also a vast improvement, however some concerns and opportunities for improvement exist there as well.

- There should be clarification of the definition of "principle characteristics" of games to ensure that we don't reinvent the "one game means all game" mistake.
- Without clarification of scope of gaming limits, the legislative solution to the tenth and eleventh amendment defenses is unacceptable (in fact, it is a transparent artifice, but acceptable if the scope of gaming language is strong enough). These two provisions are not severable.
- If states choose not to negotiate, the Secretaries discretion must be clearly identified and limited to the boundaries of the affected state's laws (this skirts the issue of how the Secretary can act as a negotiator when he has a trust responsibility to only one of the parties).

III. After acquired lands/lands in trust. A circuit court in Oregon has ruled that the Governor's veto authority over gambling on after acquired lands violates the appointments clause of the Constitution, thereby infringing on the President's right to delegate responsibilities to appointees (the Siletz decision). To address this issue, we recommend that the Governor's consent be a prerequisite to the tribal submission of a plan for gambling on after acquired lands. In this way, the decision is determined well before the Secretary's desk.

IV. Finally, on "non-gaming activities" we propose a definition of "games of chance" in *which a player risks or gives something of value for the opportunity to obtain a benefit*. This language would address Arizona's charitable gaming situation, so that such games as currently permitted by Arizona law would not be interpreted to violate the Cabazon decision (any game for any purpose). I think Arizona's unique charitable gaming structure is finally understood by key committee staff.

Without your objection, this testimony will be faxed to Senator McCain on Monday, August 1. Please call me if you have any additional concerns.