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Federal government remiss in regulating casino operations

By JERRY ZREMSKI
News Staff Reporter
5/19/2004

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ROBERT KIRKHAM/Buffalo News
Crowds at the new Seneca Allegany Casino are deep but oversight is thin with few inspectors to regulate Indian gambling.

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You would never know it by the amount of money the Senecas paid their main lender, but the \$80 million loan at about 30 percent interest was officially "void" for most of the past year.

The National Indian Gaming Commission ruled May 3, 2003, that the loan required further federal scrutiny. Donald Pongrace, an attorney for the Senecas, said the tribe, the lender and the agency recently settled their differences over the deal.

The casino and the loan kept operating through all the time that the loan was void. Pongrace said the term "void" simply meant the deal would have been unenforceable in court.

But gambling opponents said the handling of that loan is just another example of how little federal scrutiny exists over America's fast-growing collection of Indian-run casinos.

The federal gaming agency employs 74 people to oversee the gambling operations of 203 Indian tribes.

In contrast, the two New Jersey agencies that oversee Atlantic City's 12 casinos employ 700.

"It is a crime for the people at NIGC to not be banging on their desks and demanding an enormous funding increase," said Alexis Johnson, an Arizona attorney who works to stop the expansion of casino gambling.

The gaming agency complained about a provision in the Seneca loan deal that would give the lender - Freemantle Ltd., a company created by Malaysian investor Lim Kok Thay -

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control of the Niagara Falls casino if it went into default.

Experts said the agency should have complained far more.

"This loan is so heavily weighted to the man with the moneybags," said Jeff Benedict, a casino opponent who wrote "Without Reservation," a book about the creation of the Pequot Tribe's Foxwoods Casino.

Contrary to earlier reports from Seneca sources, the loan agreement - which The Buffalo News obtained - does not force the tribe to relinquish nearly 10 percent of the Niagara casino's first-year profits to the lender.

But in addition to the high interest rate, the loan pushes all sorts of risks - even the risk of paying Lim's U.S. taxes on the deal - onto the Senecas.

And perhaps most importantly to many individual Senecas, the loan deal waives the sovereign immunity that typically protects the tribe from lawsuits.

"The wording in the documents specifies a limited waiver, specific to that item," said Seneca President Rickey L. Armstrong Sr. "Companies would not lend money to you or not assist you unless you give them a waiver on that specific issue."

The loan agreement didn't trouble bond investors, who recently bought \$300 million in Seneca Gaming Corp. bonds to expand the casino.

The loan from Lim appeared to be necessary to get the Niagara Falls casino up and running, said Michael Scerbo, a director at the bond rating agency Standard & Poor's.

But John Tarras, who teaches casino finance at Michigan State University, said the tribe "got ripped off." And Benedict wondered why federal officials didn't question the interest rate.

Then again, this is not the first time the federal gaming agency has demonstrated its lack of clout in Western New York.

In 1999, the agency sent threatening letters to 14 Seneca smoke shops, warning them that it was illegal to sell "pull-tabs," an instant lottery game.

Five years after the federal agency threatened the private Seneca smoke shops with fines of \$25,000 a day if they didn't stop selling pull-tabs, the instant lottery games were still on sale at many this spring.

You'll find them at J.C. Seneca's Native Pride and Barry Snyder Jr.'s JR's smoke shops - which received those federal threats - and at Salamanca's Dudley Hotel, which didn't.

Johnson said it's all a sign that the agency overseeing Indian gambling isn't up to the job.

"There is no will in Congress to fund this agency so it can do its job of regulation and enforcement competently," he said.

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