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Calley: The truth about legislative authority

There are many people in my line of work that view truth as somewhat subjective. Issues are seen as political opportunities to score points with certain groups, and so called facts are molded to achieve favorable political ends. Sorting out fact from fiction can be difficult in such a highly charged, political environment.

The debate over a tribal-state gaming compact between the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians of Michigan (Gun Lake Band) and the State of Michigan is just such an example. Oh, I could make political hay out of this issue just going along with outright opposition to the state entering into a gaming compact. However, my responsibility to the people of the 87th District leads me to a much different conclusion.

In this case, both sides have such wildly different claims that directly contradict each other that I decided to conduct an independent investigation in search of the truth. Keep in mind that my investigation did not try to prove or disprove any of the claims of negative social effects or positive economic benefits of a gaming operation. Rather, I chose to investigate where the State's authority begins and ends with regard to regulation of the activities of federally recognized Indian tribes.

Federal law dictates that Indian tribes have the right to operate gaming as a means of economic development in states where such gaming is allowed for any purpose, by any person, organization or entity. The Gun Lake Band is undisputedly a federally recognized tribe and the state of Michigan has undisputedly authorized Class III gaming by both tribal and non-tribal entities.

Class III gaming basically allows for a full-blown casino. The State of Michigan has entered into Class III gaming compacts with 11 of 12 federally recognized tribes (the Gun Lake Band being the 12th). The state has also authorized non-tribal Class III gaming operations (Detroit casinos) under the Michigan Gaming Control and Revenue Act.

So that part is pretty clear. If a state allows anyone to have gaming operations, then it must allow federally recognized tribes to do the same. Now what about the recent Michigan Constitutional Amendment that requires both local and statewide voter approval for new Class III gaming operations? Our Michigan Constitution has no bearing on federally recognized tribes as they are technically sovereign nations. So our constitution would require a vote for a new non-tribal operation, but that is where it ends.

Now, to have a casino, a tribe must have land in trust with the US Department of Interior. That is the area of federal government that deals with Indian affairs. The Gun Lake Band has land in a township adjacent to the southwestern part of my legislative district that the Department of Interior has accepted in trust.

A local anti-gambling organization has filed a lawsuit challenging the decision of the department to take the land in trust. I am not a lawyer, however, I have read several reports that indicate that the arguments being made are nearly identical to those made in previous unsuccessful attempts to stop gaming operations in Michigan.

Still, in order for a tribe to operate a Class III operation, they must have a compact. So, based on that, it would appear as though a full-blown casino could be stopped by the legislature. Not so fast. There are federal procedures in place wherein the Secretary of the Interior could essentially force a Class III compact if the state would not. In this case, we not only risk losing the ability to tax, but also the ability to regulate the minimum gambling age and even tobacco sales.

So what are my options as a state legislator? Since I am very confident that the Interior Department's land trust decision will be upheld like all of those challenges before; the question shifts to a discussion of whether Class II or Class III gaming is allowed.

You see, with land in trust, Class II gaming is automatically authorized, with or without a compact. This is not a disputed fact. Class II allows for bingo - but not the bingo you know. Today, bingo is played on slot machines called "bingo slots". While the games technically work differently than regular slots, you wouldn't know it by looking at them. In Florida, the Seminole and Miccosukee tribes, who battled that state for years, went ahead with just such an operation.

Today, those tribes take in \$1.6 billion per year and the state of Florida gets nothing - no taxes, no gaming oversight, no control over the age of gamblers and no control over tobacco sales. That is a disaster I would like to prevent here in Michigan.

Here are my options as I see them. I could reject a compact and challenge the right of the US Department of Interior to force one. If the State loses that challenge (and I have every reason to believe we would), we end up with an unregulated, untaxed full service casino. If the state somehow wins, we end up with a "bingo slot" casino that is totally unregulated and untaxed. In other words, no compact equals a no win situation for Michigan.

Or - I could support a strict compact that regulates the gaming, guarantees that those under 18 could not purchase tobacco products and prohibits those under 21 from gambling.

Further, the compact requires that taxes (technically called revenue sharing) be paid to both the local and state government.

The legislature just completed negotiations on the new business tax code. As a state, we are asking businesses to pay for the state services they consume. It would not fair or equitable to those businesses if we did not require the same of casinos.

More importantly, I want all gambling to be regulated, whether it be a Class II or Class III operation.

What the legislature is being asked is: do you want to tax and regulate the casino that the feds are approving? Voting "no" on the compact would be like voting for unregulated gaming. Ironically, the socially conservative thing to do is to vote "yes." I am a social conservative.

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