

THE PAST, PRESENT, AND FUTURE OF
CARD ROOMS IN CALIFORNIA

Article

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Gambling has been a part of California since the gold rush brought about westward expansion, which displaced Native American Indian tribes. It is ironic that 150 years later, Indian casinos are displacing card clubs by luring away card room customers with slot machines and full casino gaming. With the recent passage of Proposition 1A, California continued to expand the gambling opportunities in the state to an extent that rivals Nevada. In less than a decade, California voters have passed two ballot measures to allow Nevada style gambling, including slot machines, on Native American Indian reservations located within the state. The passage of Proposition 5 in 1998, and Proposition 1A in 2000, came from Californians who were also in favor of a state lottery.

Proposition 1A provided an amendment to California's Constitution, and allowed the governor to enter into state compacts with federally recognized Native American tribes. The compact, subject to legislative approval, allows a tribe to operate Nevada-style, or Class III, gaming that includes slot machines and percentage games such as blackjack. The compact also allows the casino to act as the bank and compete directly with the player.

It is unlawful for a California card room operator to offer slot machines and any percentage game such as craps, roulette, or blackjack. In addition, card room owners cannot use their own "house" funds to cover the players' wagers, or "bank" the games offered for play. California card rooms are only allowed to collect a pre-determined fee that is based on the use of the facilities and services the card club provides. The fees are charged on a per-hand basis, and cannot

be linked to the amount the player wagers. Players bet against each other, and the winnings are determined by the amount of money the opposing players wager on each hand.

Indian gaming casinos operate approximately 20,000 slot machines in California, and that number is expected to rise as more recognized tribes seek compacts with the governor.¹ It is estimated that slot machines account for at least sixty percent of a casino's revenue, and each machine can generate up to \$300. profit each day.² Some believe that the rise of Indian gaming will lead to the demise of California's card rooms, while others forecast that the card rooms will eventually be granted some form of Class III gambling.

The battle over slot machines and gambling dollars has frequently placed the competing industries into the courtrooms, with the card room owners challenging the legality of Proposition 1A. Larry Flynt, who owns the Hustler Casino, argued that the compacts with Native American tribes under Proposition 1A, violate the equal protection clause of the State's Constitution. The court disagreed and it is expected that the decision will be appealed. Other suits may follow and provide a remote possibility the card rooms could obtain Class III gaming rights.

Historical Perspective

Card rooms have existed in California since the mid 1800's³. By 1891, California Penal Code Section 330 outlawed the play of twelve games such as Blackjack, Faro, Monte, and Roulette. The statute was intended to ban the popular casino games of the time and to prohibit the play of banked or

percentage games.⁴ The twelve prohibited games were considered “games of chance” that relied on luck rather than skill. The term “percentage” referred to the advantage the house had when playing these games. In a percentage game, the house has an automatic advantage, since it sets the odds and can draw up the rules that, over time, usually favor the casino. A “banked” game occurs when the house takes on all players, collects all losses, and pays all winners.

Since the statute did not prohibit draw poker, the game continued as long it was not conducted as a banked or percentage game.⁵ Players legally wagered amongst themselves and avoided the bank prohibition of the statute. Card room operators facilitated the play of draw poker by providing the table, cards, a dealer, and the exchange of cash for chips. The operator could not have a monetary stake in the game, but did charge a fee to each player for conducting play of the game. In People v. Ambrose, 122 Cal. App 2d Supp. 966, 265 P.2d 191,194 (1953), the Court affirmed that charging a fee to the players did not constitute a “banking” game.

In 1962, legislation passed that allowed counties and cities to adopt local regulations that controlled the play of draw poker. The legislation also provided a ballot proposition for counties with a population over 4,000,000 that would allow the voters to outlaw the play of draw poker if they so chose.⁶

Prior to 1984, California’s card clubs existed throughout the state with little fanfare. Most were small with less than 35 tables each. In the early 1980’s, the card room scene changed when California clubs began to offer pai gow.⁷ The game originated in ancient China, and is played with 32 tiles that are similar in

appearance to dominos. Pai gow became significant for several reasons: it attracted a new customer base to the card clubs; it opened the door to variation games like double hand, or pai gow poker; and it sparked a series of legal challenges to California's gaming statutes. The popularity of the Asian games also led to the expansion of the card room industry in California.

Since pai gow was not one of the prohibited games listed in Penal Code Section 330, some card rooms introduced the game for play, and tapped into the of Asian gambling market. In some cases, local law enforcement, backed by the District Attorney's Office, attempted to stop the club owners from operating pai gow. The District Attorney contended that the game violated the banked and percentage prohibition of the statute. In Sullivan v. Fox, 189 Cal.App.3d 673 (1987), the Court held the house was not a participant in the play of the game, so it did not meet the definition of a "banked" game. However, when the Court examined the fee collection methods, it determined that the house violated the "percentage" prohibition of the statute.

When the Sullivan decision was published, card clubs merely changed their collection methods to avoid the "percentage" violation of the statute. By 1997, the number of card clubs in the state had grown. There were also increases in the number of tables, betting squares on each table, and the type of games available to customers.⁸ After a widely publicized dispute over multiple squares betting, Penal Code Section 337(j) was added to define the process of how gaming establishments could only collect specified fees based on the use of "space and facilities." Card club owners had successfully argued their ability to

add stud poker and several variations to the games offered for play. By 1999, the state listed 210 games available in California's gambling establishments⁹. Included were 124 variations of poker, and 5 variations of "California Aces" a game where players attempt to reach the number twenty-two.

The Need For Regulation

The expansion of the card room industry during the 1980's caused several municipalities to consider ballot initiatives that would allow the clubs to continue and thereby increase local revenues by taxing the clubs. In order to address the growing industry, the Gaming Registration Act of 1983 was enacted and required anyone who owned, managed, or had a financial interest in a card room to register with the Attorney General's office.

The Gaming Registration Act was based primarily on Nevada's gaming regulations, and provided the state with some regulatory oversight on gaming operations. Concerned that the growth of the gaming industry during the 1980's and 1990's would soon lead to legalized casino gambling, the California Attorney General noted that large corporations and partnerships were consuming several of the "mom and pop" card rooms.¹⁰ In 1997, the Act was repealed and replaced with the Gambling Control Act. The Gambling Control Act established more stringent state control over gaming by creating the Division of Gambling Control within the Department of Justice. The Division assumed the responsibility to investigate and enforce controlled gaming activities. The Act also created the Gambling Control Commission, a panel appointed by the governor which was charged with gaming oversight for the state.

In addition to establishing licensing requirements, Senate Bill 8 also required all gambling club employees to obtain a work permit. Several sections were added to the California Business and Professions Code that provided uniform criteria for determining permit eligibility. The act also provided additional regulations of gaming in the state and established a greater regulatory control over the card room industry. The act allowed local authorities to continue to regulate gaming in their respective municipalities, provided the local ordinances were consistent with the state's provisions. The Act also placed a temporary limit on the rapid expansion of new card clubs, putting a moratorium on new growth until 2003. Assembly Bill 1416 has extended that limit until 2007.

The Social Cost of Gaming

When California enacted the Gambling Control Act of 1997, the legislature recognized that gambling, if left uncontrolled, carried social consequences such as an increase in gambling addiction and a rise in criminal activity.¹¹ Proponents of legalized gambling contend that regulated gaming is far better than the crime associated with illicit forms of gambling. They focus on the economic benefit that gaming brings, while downplaying the social ills associated with gambling.

With any 24-hour operation that involves the exchange of money, there is an increased risk of criminal activity. A variety of crimes, including loan sharking, corruption, robbery, theft, and organized criminal enterprises, have been associated with California's card rooms. Growth also brought an increase in criminal activity. Narcotic violations, thefts, and assaults rose in the neighborhood surrounding a casino in San Jose, the year after the club opened

its doors¹². In 1990, a Federal investigation revealed that the Bicycle Club in Bell Gardens had been financed by the illegal proceeds of drug trafficking¹³. A portion of the club's assets were seized and several owners were indicted on racketeering charges.

What's In Store For The Future?

Gambling is a multi billion-dollar industry in California, and is expected to grow within the next seven years.¹⁴ In less than five years, the state's moratorium on new gaming licenses will expire. Within this time frame, it is likely that legislation will pass allowing publicly traded companies to obtain a gaming license. Corporate sponsored gaming has the potential to bring in a significant amount of resources to promote the club and generate profits. For some local governments, card rooms may be viewed as the solution to a slumping economy and decreasing revenues. Regulated gaming can contribute financial support to government services and capital improvement projects. Local gambling will also impact surrounding neighborhoods and place an added demand on local government services.

Despite its long history, legalized gambling continues to be seen as a vice, and this opinion will continue even if the economic benefit from gaming outweighs the social costs. Gambling also brings concerns of criminal activity, corruption, and the social consequences such as addiction and personal bankruptcy. The impacts of gambling expansion can be mitigated. Law enforcement agencies have the ability to take advantage of the current moratorium on the industry and plan for the future.

An opportunity currently exists to put measures in place that will minimize the impact that card room gaming will have on a community. Local government should require an environmental impact report for any new card room or expansion to an existing club. When examining land use requirements, consideration should also be given to long-term expansion, as the card room could significantly alter a surrounding neighborhood. Law enforcement should review their local ordinances that govern gaming to insure it complies with state law, and that it adequately addresses the preferred gaming parameters of the agency and community. Local law enforcement officials should also collaborate with the Division of Gambling Control, the Attorney General's Office, and state legislators to craft desired regulatory control.

The organization also needs to determine what demands the card room will have on its resources, and evaluate the need for additional personnel to regulate and manage the card room. There is a likelihood that by the year 2007, new card rooms will emerge, existing clubs will increase their numbers of tables, and the types of games offered for play will be similar to games in Nevada casinos. For the law enforcement agency that fails to plan ahead, card room expansion will cause an increase in their calls for service, generate criminal activity, and require additional resources to regulate the operations. The successful agency will anticipate the issues associated with the potential expansion of gaming and develop a strategic plan to address any concerns. The agency will also be in a position to manage any change in card room gaming without compromising service to the community.

Endnotes

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- 1 "The Case Against Proposition 1A"
<<http://standup.quicknet.com/stop1a/case.html>> Accessed 4/22/02.
 - 2 Ibid
 - 3 Chafetz, Henry. "A History of Gambling in the United States." Clarkson N. Potter, Inc. New York, 1960.
 - 4 State of California, The Commission on Peace Officer Standards and Training "POST Gambling Recognition Telecourse, Student Reference Manual." April 1996, p. 7.
 - 5 Monterey Club v. Superior Court 48 Cal.App.2d 131 (1941).
 - 6 California Penal Code Section 337(s).
 - 7 California Attorney General, Department of Justice "Gaming in California" November 1993. p. 6.
 - 8 Roger Dunstan, "Gambling in California." California Research Bureau (January, 1997) <<http://www.library.ca.gov/>> Accessed May 31, 2002
 - 9 California Office of the Attorney General, Department of Justice "California Gambling Establishments Game Report." 1999.
 - 10 California Department of Justice "Gaming in California." p. 37.
 - 11 California Business and Professions Code Section 19801 (1997).
 - 12 David Dietz, "Cardrooms a Draw for Criminals," SF Chronicle, 19 August 1996, p. 1.
 - 13 California Department of Justice, "Gaming in California." P. 29.
 - 14 State of California, Little Hoover Commission, "Card Clubs in California; A Review of Ownership Limitations." April, 2002

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