



Public Trust and the Integrity of a Tribal Gaming Commission

by Andrew Hofstetter

When one looks at tribes and Indian gaming, the general image people have is Vegas style slot machines on Indian lands. However, people in general may not know that most tribes have gamed with traditional games prior to Indian gaming casinos, with various versions of “traditional stick games” and betting on other traditional games such as endurance horse racing and so on. Tribes have gamed since time immemorial. Since the passing of the Indian Gaming Regulatory Act (IGRA), created in 1988, tribes have evolved Indian gaming with tremendous innovation, leadership, and success as they progressed into the 21st Century. With great success in the industry comes great responsibility and a great deal of care in managing casino operations and protecting the public trust.

Public trust is inviolable for the industry, for perceptions and interpretations of what the public experiences at a casino can shape their opinions of the industry, the image of a particular tribe, and/or (unfairly) all tribes. When there is negative press regarding a tribe, it is not uncommon for the public to label all tribes based on what they saw or heard. Unfortunately, this is something tribes have dealt with for a very long time. However, tribes are passionate about protecting their patrons, employees, tribal members, and local community as well. To protect the assets, integrity, and public image of a tribe the Tribal Gaming Commission (TGC), is responsible for ensuring compliance for the following:

- Indian Gaming Regulatory Act
- Tribal State Compacts
- Minimal Internal Control Standards
- Tribal Internal Control Standards
- Tribal Gaming Ordinances
- Rules and Regulations
- Johnson Act
- Standard Operating Procedures
- Bank Secrecy Act – Title 31
- Liquor Ordinance
- Policies and Procedures

These documents have a general tone that echoes and demonstrates public trust and what is needed to not break it. When there is a shadow of doubt over the integrity of a casino operation with either corruption, foul play, dishonesty, ethics violations, compliance violations, fraud, or failure to protect the patrons, employees, and those who serve, the pillars of public trust are drastically eroded. Ultimately, it is a betrayal of public trust when this happens. Positions of authority and or

elected positions are considered positions of public trust, or in general, positions of trust. They are held in high regard and held to the highest standards in the industry. Individuals in these positions are expected to not only perform, but to be ethical, fair and honest, and operate with the utmost integrity as they perform their duties. On a business level, positions of management of a tribal casino are also positions of trust. Every decision they make, the things they do and don't do, is all in the capacity of public trust, which can directly affect the reputation or public image of the casino or tribe. One must also look at the cause and effect of each decision and how it affects the public.

At the onset of the COVID-19 pandemic, tribal leaders moved quickly to close their tribal properties to protect the health and safety of the public, employees, community and the tribe. In many instances, the response of tribes was much quicker and more effective than that of state responses. The actions tribes have taken regarding COVID-19 pandemic is an example of being an excellent steward of public trust and its bonds, looking out for the best interest of the public, and knowing how to respond to a global pandemic in an expedient manner for all. COVID-19 has affected countries around the world, affected the U.S., and many tribes have been hit very hard by the pandemic as well. If COVID-19 has taught us anything, it has been to work together and learn new ways to operate and live to keep everyone safe in the process.

As the COVID-19 response has demonstrated, Indian gaming is not only about generating critical revenue for tribes, but also about protecting the public and keeping them safe and out of harm's way. Statutes are living and breathing documents that are designed to keep the operation accountable, and to safeguard and protect. An excellent example of this is a tribal casino's tort claim process. It is designed from a health and safety risk management perspective to investigate, review, decide, and course-correct policy when necessary to protect the public. When a claim is filed, it is thoroughly reviewed with the injury of the patron in mind, along with statutes and policies of the property at hand. Ultimately, it is a process to determine what exactly happened when, where, how, why, and to whom. This process affords the patron an opportunity for an appeal hearing so they can be heard, and their case can be reviewed in a methodical manner that considers all information and evidence at hand. When someone looks at the history of tort claims, they will find instances of claims that are staged, and claims that are not staged. Whichever

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the outcome of each claim, this process is imperative to the industry, as it allows for an independent review of an alleged wrongful incident, generally associated with an injury and claim.

Ultimately, the TGC is more than an investigative agency, it is the great seeker of truth on all aspects as it pertains to services, employees, vendors, gaming device manufactures, contracts, claims or incidents with the public, and regulatory concerns. Customers may not realize that when they are in a tribal casino that the cashier that helped them redeem their slot machine winnings, or the security officer that gave them directions to the restaurant, were each vetted through a background investigation process. In this process, the TGC is looking at: criminal history; credit; associations and ties with organized crime; DMV records; court records and rulings; verifying personal references; and verifying that personal and professional information is accurate and true.

Customers also may not realize that the slot machines or tables they gamed on were tested to ensure they were accurate, fair, and in compliance. In addition, the manufacture that made those games had a thorough background investigation conducted on them as well. The TGC ensures that financial audits are conducted, and audits of the minimal internal control standards are conducted as well. The TGC also ensures that a property is safe, by ensuring a facility license is in place, and by conducting a thorough health and safety inspection of all buildings, spaces, eateries, entertainment venues, and all areas the public and staff can access. They ensure the structural integrity is in full compliance with building codes and everyone is safe. The roles of a TGC are to protect the public, and the integrity, assets and public image of a tribe. It is all designed to keep a facility honest and fair.

Public relations is important to a tribal casino, because if a casino receives a bad reputation or bad headlines in the paper, it can seriously affect the business and the operations of the casino. For this reason, it is important to have due process in place for patrons, licensees, and staff. Due process may include for the following:

Tort claims – When a patron is injured at casino and believes the casino is responsible.

Prize claims – When a patron believes a vendor, game or casino has somehow cheated or underpaid on a game win.

Exclusions – When a patron is excluded from the casino for bad conduct and behavior for a length of time.

Patron self-exclusion – A patron provides a written request to be excluded.

Winnings seizures – When an excluded patron wins a jackpot and winnings are denied and held.

Gaming license – When gaming licensee (vendor or employee) is suspended, denied, or fined for cause.

Through the efforts of protecting the industry, tribes work with the following agencies: state gaming regulatory agencies, the National Indian Gaming Commission, FBI, sheriff's departments, local law enforcement, district attorney's offices, and the Department of Homeland Security, to name a few. The above-mentioned agencies work together with tribes on many levels. The public may not see it on the surface, however many documents, statutes, and working relationships are forged to protect the public trust.

Indian gaming has brought employment, opportunities, eateries, hotels, slot machines, tables games, a variety of amenities, and essential financial means to tribes. It has brought forth protocols, statutes, rules and regulations to protect not only the industry as a whole, but to protect the public, patrons, staff, tribes, and future generations. It is the example in the industry of how to effectively operate and regulate a casino, and to protect the public trust. Ultimately, public trust is a sacred and silent unbreakable promise one makes. It is one that demonstrates to the public that one's actions and words are in the best interest of the public and community. At the end of the day, the covenant of trust is everything. ♣

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