



## ***Tribal Gaming Regulatory Agencies and Casino Compliance: Two Sides of the Same Coin***

by Dave Vialpando

Rewinding the clock back to the spring, amidst the continued closure of gaming operations and amidst the beginnings of the pandemic, many tribal gaming compliance and regulatory professionals found themselves in very new territory. Ensuring public health and safety has always been required by federal and tribal regulation; however, not until recently did it become the primary focus for compliance teams and resulted in our usual focuses of game integrity and asset protection taking a back seat.

Raquel Buari, Vice President of Compliance for the Four Winds Casino and a Pokagon Band of Potawatomi Indians Citizen, remembers it vividly. “As I began what seemed to be the monumental task of ensuring that our properties were prepared with adequate policy and procedures for re-opening in a manner that ensured the health and safety of our employees and guests, I suddenly found myself learning a whole new language. I think that we all did. Looking back on it now – it was utter chaos in my home,” she said. “My day was filled with filling the role of teacher for my child now suddenly learning virtually; loud toddlers in the background whose daycare facility was closed; virtual meeting after virtual meeting with risk management, the training department, and the operating departments – attempting to ensure that what we’d identified as necessary health and safety measurements were going to be sufficient and feasible and that we could source needed materials in time for opening (which was a moving target). All of this while trying to stay up to date with the latest CDC guidance, other expert advice and pandemic trends, which seemed to be changing daily. Drafting the guidance that we would issue to our employees as well as to our guests was often done in the middle of the night so that I could focus in silence – an option not available to me during the day. I suspect that many of us had similar experiences, but we rolled up our sleeves and got to work. We shared our plans with our tribal gaming commissions and tribal health officials and we worked together to finalize plans that were rolled out across the country that we should be proud of.”

The unprecedented environment in which the gaming industry operates today presents equally extraordinary challenges for Tribal Gaming Regulatory Agencies (TGRAs) and casino operators confronting casino closures, re-openings, limited operations, new health and safety requirements, and risks associated with an operational landscape that seems to change from day-to-day. There has never been a greater need for the various components within the casino industry to collaborate constructively to ensure the continuity of operations within an

environment that is safe and healthy for employees, patrons, and visitors.

The Indian Gaming Regulatory Act (IGRA), under 25 USC Section 2701 Findings, states, “The Congress finds that Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.” The mechanism employed by tribes to regulate gaming on their tribal lands is the formation of an independent regulatory gaming agency or gaming commission. The primary role of the TGRA is to ensure the integrity of the gaming operation, the protection of tribal assets, and protect public health and safety. The TGRA accomplishes this mission through the enforcement of regulations applied to the gaming operation.

Most gaming operations establish a compliance department, which serves as the primary point of contact for the TGRA concerning regulatory matters. The casino compliance department is also responsible for ensuring compliance with a myriad of regulations and for promulgating policies and procedures and internal control standards, which serve as the translation of TGRA regulations into day-to-day casino operations and practice. When potential regulatory violations arise, TGRA staff rely on casino compliance for corrective action and a documented response. The compliance department coordinates the response to the TGRA with the responsible department within casino operations and provides the TGRA with a description of the corrective action taken or an explanation regarding why the action may not constitute a violation of the TGRA’s regulations. When TGRA staff and compliance department personnel meet to discuss perceived transgressions or alleged violations with the goal being process improvement and regulatory compliance, the result is usually a better understanding of the need for regulation and an appreciation for the myriad of processes involved in achieving compliance.

Since the compliance department operates under the direction of casino management and is considered a part of the gaming operation, managers and staff possess an intimate familiarity with all aspects of casino operations – from human resources to slots, IT to the Bank Secrecy Act/Title 31 officer, finance to environmental services. This comprehensive understanding of all aspects of the gaming operation, their relationship to each other, and the policies and procedures applied to the day-to-day processes and activity places the compliance

department in the unique position of identifying necessary changes to TGRA regulations that are either no longer applicable or which require revision due to industry and technological changes. Open lines of communication and coordination between the TGRA and casino compliance ensure that applied regulations remain current with actual practices on the casino floor and changes in the casino gaming industry. Periodic scheduled review of the application of TGRA regulations to various departments within casino operations are an opportunity to ensure that policies and procedures remain current with TGRA regulations. An ideal time to conduct these reviews may be at the conclusion of a department audit or inspection by the TGRA and may involve representatives from the involved department in addition to compliance department personnel.

It is important to note that TGRAs and casino compliance serve different masters, with TGRAs operating under the supervision of the Gaming Commission and the Compliance Department ultimately reporting to the casino's chief executive officer. Differences in the interpretation of regulations between the two independent entities is bound to arise. Mutual respect, a willingness to consider all perspectives, and a focus on game integrity, safety, and asset protection as the overarching goals of both entities will usually result in a resolution or process which is greater than the sum of the individual contributing parts.

TGRAs and casino compliance departments have years of experience developing a cooperative working relationship around shared goals in several gaming-related areas – from OSHA compliance to handheld gaming, from BSA/Title 31 compliance to sports wagering and now Internet gaming. Predicted developments in evolving game technology, like social gaming and fantasy sports, will demand the experience and expertise of gaming regulators and casino compliance professionals to carry the industry into the next generation of casino gaming.

The present situation of casinos reopening in the middle of the COVID-19 pandemic is a great example of TGRA/casino compliance working together to provide a safe environment for employees and the gaming public. Earlier this year, the National Indian Gaming Commission (NIGC) reminded tribal nations that under 25 CFR Section 559.4, tribes are responsible for ensuring that their casinos operate in a manner designed to protect public health and safety. The NIGC provided guidance in the area of public health and safety to tribes planning to re-open their casinos. Most tribal gaming ordinances delegate the responsibility for public health and safety to the TGRA. Since no TGRA in the U.S. has ever confronted a pandemic similar to the COVID-19 crisis currently impacting the country, regulatory agencies were required to design a new framework within which casino operations would function while protecting the

public from a highly infectious virus.

In many cases across the country, it has been the close partnership between TGRAs and casino compliance, with the advice of health care practitioners, tribal leaders, risk management professionals and government partners like the NIGC and Center for Disease Control (CDC), that has enabled the development of the health and safety systems we see in tribal casinos today – mandatory facemasks, social distancing mechanisms, limited gaming, and the reconfiguration of nearly every aspect of the gaming floor and ancillary offerings (entertainment, food, lodging, etc.) to ensure public safety. The dedication of TGRAs and casino compliance, working with casino management, the gaming commission, and a plethora of internal and external stakeholders has resulted in public confidence in tribal casinos as being a safe respite from a virus which continues to exact an unbearable toll through a multitude of other activity venues throughout our society.

The role of the TGRA in this pandemic has been to define the regulatory requirements to ensure public health and safety. The responsibility of casino compliance has been to design operational policies and procedures covering new health and safety protocols, coordinating staff training in new areas of health and safety, and drafting of guides, signage, and public messaging regarding new health and safety practices, such as required temperature checks, social distancing, and mandatory facemasks, and dealing with patrons and employees who pose potential health risk to others. Once implemented, it is the joint responsibility of both the TGRA and casino compliance to ensure ongoing compliance with regulations and newly adopted health and safety policies by patrons, visitors, and employees.

An example of collaboration and coordination involving the Pokagon Band Gaming Commission (PBGC) and the Four Winds Casino during this COVID-19 pandemic is in the area of COVID-19 contact tracing. Risk management personnel and PBGC staff have been certified by John Hopkins University in COVID-19 contact tracing. Coordination in this area has resulted in rapid response to possible COVID-19 cases involving casino employees. The success of this program is apparent in the fact that not one single employee asked to quarantine as a precaution has ultimately tested positive for the COVID-19 virus.

The collaborative partnership between TGRAs and casino compliance departments to ensure the continuity of gaming while simultaneously ensuring the safety of persons supporting and working in the tribal gaming industry, is but one example of the force multiplier effect these two entities can achieve by recognizing that they represent two sides of the same coin of regulatory compliance and safety. ♣

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