



THE MOHEGAN TRIBAL GAMING COMMISSION

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March 2, 2010

Senator Andrea L. Stillman, Co-Chair
Representative Stephen D. Dargan, Co-Chair
and Members of the Public Safety and Security Committee
Room 3600, Legislative Office Building
Hartford, CT 06106

Re: Public Safety and Security Committee Informational Forum Regarding Keno
and Raised Bill No. 5343

Dear Senator Stillman, Representative Dargan and Members of the Public Safety and Security Committee:

At the request of the Tribal Council of the Mohegan Tribe of Indians of Connecticut, I am writing to address Raised Bill No. 5343 ("*An Act Authorizing Keno*") in my capacity as the Director of the Mohegan Tribal Gaming Commission. The Mohegan Tribal Gaming Commission, or MTGC, is responsible for the regulation and proper conduct of all gaming on the Mohegan Reservation and is the Tribal gaming agency designated in the 1994 Tribal - State Gaming Compact between the Mohegan Tribe and the State of Connecticut (the "Compact"). I have been the Director of the MTGC since March of 2000, and previously served in a similar capacity at Mashantucket from January 1997 until September 1999. Prior to that, I was the Executive Director of the Connecticut Division of Special Revenue from July 1993 until January 1997.

As Director of the Mohegan Tribal Gaming Commission, I do not take positions on Connecticut civil legislation, such as this bill, nor am I authorized to support or oppose such a bill on behalf of the Mohegan Tribe. However, I have been asked, along with the Tribe's Office of Governmental Affairs and Office of Attorney General, to review the Governor's proposal and this bill and to advise the Tribal Council on whether keno is a commercial casino game and whether the State Lottery's introduction of keno, as proposed, would violate the Compact or trigger the video facsimile and commercial casino games exclusivity provisions in the Memorandum of Understanding between the Tribe and the State (the "MOU") concerning contributions from the Tribe to the State from video facsimile ("slot") revenues.

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On the first question, while it is my personal opinion that keno is a commercial casino game and, as a matter of settled Indian gaming law, keno is a "Class III" casino game that may only be conducted by a tribe pursuant to an approved Tribal-State Compact, I agree with the earlier conclusions of the General Assembly's Office of Legislative Research and the Connecticut Attorney General on this issue – that it is an uncertain, "grey" area. I commend OLR on the August 2008 research report on this subject (2008-R-0441) and would call your attention also to the Connecticut Attorney General's letter to this committee dated June 1, 2009 which acknowledges the legal uncertainty and suggests negotiation instead of unilateral action on keno. The grey area stems from the facts that "commercial casino game" is undefined in the MOU or Compact and keno is not a specifically-enumerated Class III game in the Compact. Therefore, it is uncertain whether a court would find keno, operated by the State Lottery, to be a commercial casino game.

If keno, as authorized, is held to be a commercial casino game or if it is played as a video facsimile, I believe it would fall squarely into the provision of the MOU relieving the Mohegan Tribe of its obligation to continue to make slot contributions, so the "commercial casino game" classification remains the central issue. While I look forward to details from the Division of Special Revenue or the State Lottery on how keno would be operated for clarification on the nature of the game, those details may still not bring the assurance that the State would need in order to authorize keno unilaterally. Definitive assurance, as suggested in the Connecticut Attorney General's 2009 letter, would need to come in the form of a mutually agreeable amendment to the MOU.

Various other states, including some of our neighboring states, have lottery-run keno games, as detailed in the previous analyses prepared by OLR and the Connecticut Attorney General. However, the U.S. Supreme Court and the U.S. Court of Appeals for the Second Circuit have not had occasion to address the issue or the Mohegan or Mashantucket Pequot MOU provisions specifically. It will likely remain a grey area unless adjudicated in court or resolved by subsequent agreement or understanding among the parties. Ever since the game of keno was imported from China and developed as a lawful casino game in Nevada where the state constitution bans commercial lotteries, it has presented somewhat of a challenge for gaming regulators. Keno continues to be lawful in Nevada where lotteries are not available, while being operated directly by state lotteries as a lottery game in other jurisdictions.

As mentioned above, the classification of keno as a Class III casino game is settled for purposes of federal Indian gaming law by 25 C.F.R. Section 502.4 adopted by the National Indian Gaming Commission pursuant to the Indian Gaming Regulatory Act of 1988. That section defines "Class III gaming" to include "(2) Casino games such as roulette, craps and keno" and separately identifies lotteries also as Class III to be operated by a tribe only pursuant to an approved

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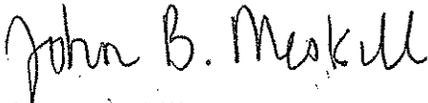
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compact. As a result of this classification, the Mohegan Tribe and Mohegan Sun offer keno in two forms, each under Standards of Operation and Management ("SOMs") adopted pursuant to provisions of the Compact which are also applicable to Tribal lottery games and have been approved by the Division of Special Revenue. Live keno is called with the use of keno ticket writers and runners approximately every 5 minutes at Mohegan Sun and can be viewed at several locations throughout the casino. In addition, video facsimiles of a keno game can be played at various multi-game slot machines at Mohegan Sun. As with other slot revenue, 25% of the net win from those fully-automated slot machines is paid to the State in monthly contribution payments.

While similarly authorized by the Compact, the Mohegan Tribe has never instituted its own lottery, leaving that to the domain of the State. While it can be said that the state lottery and gaming at Mohegan Sun complement each other and both contribute significantly to the state budget and economy, the State venturing into keno would put the two in direct competition. This direct competition over keno has been shunned and avoided in other major tribal casino markets such as California and Wisconsin. While I cannot speak to how the Mohegan Tribe will ultimately decide to proceed if the State authorizes keno unilaterally, I would certainly agree with the earlier analysis that it is an uncertain, grey area from a legal and regulatory perspective.

Finally, I would like to point out that Section 17 of the Compact has a paragraph under the heading "Consultation upon revision of State regulations," which, as suggested by the heading, contemplates a good faith dialogue and consultation before the State revises rules that correspond to a type of gaming conducted by the Mohegan Tribe. Keno is a type of gaming currently conducted by the Tribe, so on behalf of the Mohegan Tribal Gaming Commission and the Mohegan Tribe, I would like to thank you for this opportunity to address these issues and concerns in this informational hearing and ask that you keep the Mohegan Tribe advised of additional details of the proposal if and when they are developed.

Sincerely,



John B. Meskill
Director
Mohegan Tribal Gaming Commission