



OLR RESEARCH REPORT

December 22, 2011

2011-R-0476
(Revised)

OLR BACKGROUNDER: CURRENT CONNECTICUT GAMBLING ISSUES

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This report provides an overview on some current Connecticut gambling issues. These include (1) Indian tribe agreement amendments, (2) keno as a lottery game, (3) off-track betting (OTB) modernization, and (4) online gambling.

CURRENT CONNECTICUT GAMBLING ISSUES OVERVIEW

During recessions, states will often look for new revenue sources to balance budget shortfalls. One revenue source states will sometimes turn to is gambling.

Legalized gambling is a changing market in Connecticut. With the recession and increased gambling competition, the state may have to change certain policies or agreements in order to retain the same prerecession revenue levels. Last year, Connecticut relied on \$653.5 million of gambling revenue to help balance its \$20 billion annual budget.

Gambling was once thought to be recession-proof, but Connecticut's gambling revenue (except from the lottery) is down from FY 07. From FY 07 to FY 11, it has decreased by approximately \$62.1 million, from \$715.6 million to \$653.5 million.

One obstacle to an expansion of gambling in Connecticut is the separate agreements it has with the Mohegan and Mashantucket Pequot tribes. Under the agreements, the tribes pay the state 25% of their slot revenue as long as no one else lawfully operates commercial casino games in the state. Thus, if Connecticut wishes to expand legalized gambling to include other casino games or change any agreement term, the agreements must be renegotiated. There are no formal renegotiation procedures, but there is a statutory approval process.

A proposal the state may consider developing is Keno as a lottery game, though this may violate the Indian agreements if it is determined to be a casino game. Other ideas for increasing revenue include modernizing OTB operations or authorizing Internet gambling. After years of uncertainty, a recent U.S. Department of Justice (DOJ) opinion has concluded that non-sports intrastate online gambling is legal.

With these current issues, policymakers must weigh gambling expansion with generating new revenue.

CASINO ISSUES

Connecticut has two Indian casinos. The Foxwoods Casino began operation in 1992 and the Mohegan Sun Casino in 1996. Both tribes have separate agreements (memorandum of understandings) with the state giving them the exclusive right to operate slot machines so long as no one within the state lawfully operates commercial casino games. In exchange, each tribe must contribute 25% of gross slot machine revenue to the state monthly. If either tribe's contribution falls below \$80 million in any year, its rate increases to 30% in order to ensure a combined \$160 million minimum annual contribution.

The agreements do not contain any amendment or modification clause. Although there is no formal procedure, the parties may negotiate changes. The Pequot agreement has been changed twice. The first amendment modified the payments to the state (April 30, 1993); the second amendment allowed the Mohegans to operate casino gaming (April 25, 1994).

If the state or either tribe wishes to renegotiate any agreement term, they would need to follow the legislative approval process specified in [CGS § 3-6c](#).

Casino Revenue

The tribes' payments under the agreements to the state have decreased from \$430.5 million in FY 07 to \$359.6 million in FY 11. Part of the decline is attributable to the recession, but the casinos have faced increased competition from new gambling facilities in New York and Rhode Island. One study attributes a portion of Connecticut's revenue decline to Massachusetts gamblers going to Rhode Island's Twin River facility, where total revenue was up 7% in 2010 (http://www.umassd.edu/media/umassdartmouth/seppce/centerforpolicyanalysis/NEGU_2011.pdf).

Both the recession and increased competition have negatively affected the Mohegan Sun and Foxwoods Casinos. As Table 1 shows, both casinos have seen their revenue drop after FY 07.

Table 1: Casino Payments to the State (FY 97-11)

<i>Indian Gaming Payments</i>	
Fiscal Year	Revenue Total
2007	\$430,475,712
2008	\$411,410,973
2009	\$377,804,885
2010	\$359,253,246
2011	\$359,581,127

Source: Department of Consumer Protection, Gaming Division

Casino Competition

Even though casinos in Rhode Island and New York have siphoned away gamblers, perhaps the greatest threat for the Connecticut casinos are the three casinos and one slots parlor that a recent 2011 Massachusetts law authorizes. The law requires them to be built in different geographical regions around the state, with one in the (1) eastern region that stretches from Boston to Worcester; (2) western region that includes Hampden, Hampshire, Franklin, and Berkshire counties; and (3) southeast region that includes the Cape, South Shore, and cities like New Bedford and Fall River. The law also allows a single, competitively bid slots-only casino that can be built anywhere in the state (H.B. 3807, 187th Sess. (Mass. 2011)).

Even if the economy improves, the prospect of increased competition from the Massachusetts casinos makes further Connecticut revenue decreases likely. According to a University of Massachusetts' Center for Policy Analysis research, last year about 31% of Foxwoods' customers

and 20% of Mohegan Sun's, came from Massachusetts. The center also estimates that 67% of Massachusetts gamblers would stay in the state if it had casinos and that the Connecticut casinos may lose up to 20% of their revenue in the next three to five years

(<http://www.businessweek.com/news/2011-11-23/foxwoods-mohegan-sun-may-lose-under-massachusetts-casino-plan.html>).

KENO

In 2010, Governor Rell proposed keno as a lottery game to help balance the state budget. Keno is a game of chance in which players select numbers (typically 10 to 15) and try to match them with numbers (typically 20) randomly generated from a field of one through 80. The more numbers a player matches, the bigger the payout. Payoffs vary depending on game structure and frequency of drawings.

In its testimony on the proposal, the Connecticut Lottery Corporation (CLC) stated that gross annual sales could be as high as \$300 million in future years, which could translate into approximately \$60 million for the state (<http://www.cga.ct.gov/2010/PSdata/Tmy/2010HB-05343-R000302-Connecticut%20Lottery%20Corporation-TMY.PDF>).

The principal question surrounding the introduction of state-run or state-authorized keno is whether it would violate the state's agreements with the Indian tribes. The answer appears to depend on the interpretation of certain phrases in the agreements. The two major issues appear to be whether (1) keno is a "commercial casino game" and (2) the state is an "other person" under the agreements. There is no Connecticut or controlling federal court ruling on these precise questions. Additionally, there is no consensus in other states on whether it is a casino or lottery game.

The attorney general, in a 2009 opinion, suggests:

[a]t this point, there is no definitive answer to the questions you raise. Courts are divided on the issue of whether Keno is a lottery game and the answer may well depend on specific factual details – not yet available – as to the specific type and structure of Keno gaming contemplated by the Governor's budget. One critical point seems certain: a possible violation of the Tribal/State slot machine agreements could put at risk more than \$400 million in state revenues. Therefore after the details are determined as to the Keno game proposal, the most prudent and responsible course, fiscally and legally, would

seem to be an amendment to the Mohegan and Mashantucket Pequot slot machine agreements (<http://www.ct.gov/ag/lib/ag/opinions/kenoopinion.pdf>).

OLR Report [2008-R-0441](#) discusses these Keno issues in greater detail.

OFF-TRACK BETTING (OTB)

State law authorizes 18 OTB facilities. Scientific Games, which owns the OTB license, however, has only established 15 of the authorized 18 facilities. The 15 facilities are in statutorily mandated locations, which are: Bridgeport, Bristol, East Haven, Hartford, Manchester, Milford, New Britain, New Haven, New London, Norwalk, Putnam, Torrington, Waterbury, Windham, and Windsor Locks ([CGS § 12-571a](#)).

Connecticut, like many other states, has been experiencing a drop in its OTB revenue. From FY 02-06 the state received an average of \$5.5 million per year to the General Fund, but only an average of \$4.2 million per year from FY 07-11.

Aside from the declining racing market, another reason Scientific Games has developed only 15 out of the 18 authorized facilities is because only 15 are authorized by law to provide live television coverage of races. If the state allowed all 18 licenses to simulcast races, it could make it more likely that Scientific Games would develop more properties.

Even with the decline in the racing industries, Scientific Games believes that with a new business model where OTB venues are part of existing bars or restaurants, modest revenue gains are possible.

In addition to developing new licenses and putting OTB into existing restaurants and bars, Connecticut may want to consider allowing bets over the Internet, as is done in New Jersey. Currently bets are only taken at an OTB facility or over the phone. Internet wagers are specifically allowed by a 2000 amendment of the Interstate Horse Racing Act of 1978 (15 U.S.C. § 3002(3)).

INTERNET GAMBLING

A new revenue source that some states are attempting to capture is from Internet gambling. If Connecticut wishes to pursue this revenue, it would likely have to amend the Indian agreements to not risk losing the slot revenue.

Legality

The DOJ recently reversed its position on Internet gambling. On December 23, 2011, in separate, but identical letters to Senate Majority Leader Harry Reid and Senator Jon Kyl, the DOJ concluded the Wire Act (18 U.S.C. § 1084) only applies to sports betting. The act prohibits gambling businesses from using interstate or international telecommunication wires to knowingly transmit or receive bets.

Enclosed with both letters was a September 20, 2011 DOJ Office of Legal Counsel opinion that analyzed the scope of the Wire Act and concluded the act applies only to bets on a “sporting event or contest.” Prior to this opinion, the DOJ consistently claimed that Internet gambling was illegal under federal law, which it based primarily on the Wire Act.

The other law the DOJ relied on was the Unlawful Internet Gambling Enforcement Act (UIGEA) (31 U.S.C. § 5363), which the opinion was careful not to touch. The UIGEA prohibits financial institutions from conducting financial transactions (e.g. honoring credit card payments) in connection with unlawful online gambling. This means that even if online gambling was legalized, certain financial related crimes would still violate federal law.

Even though the opinion specifically answers Illinois and New York’s question on the legality of online lottery ticket sales, the conclusion will also allow states to introduce other forms of intrastate and possibly interstate online gambling. This could include poker, if it is determined not to be a sporting event or contest.

The UIGEA explicitly excludes from its application online gambling within a state or tribal jurisdiction, thus making intrastate online gambling legal.

The DOJ opinion also appears to allow states to form gambling compacts with other states that have legalized online gambling. The UIGEA is an enforcement law, which means it looks to other federal and state laws to determine if the online gambling is legal. If the states make it legal, then the UIGEA does not apply.

To see the DOJ opinion, see: <http://www.justice.gov/olc/2011/state-lotteries-opinion.pdf>.

Poker

One of the most popular forms of online gambling is poker. Even though it was not clear whether online poker was legal, Poker Players Research showed that 10 million Americans played in 2009 and it is worth at least \$2.5 billion a year in worldwide revenue (<http://edition.cnn.com/2011/BUSINESS/07/22/online.poker/index.html>). Some states have recognized this and have attempted to capitalize on this untapped revenue.

In recent years, states such as California, Florida, Hawaii, Iowa, and New Jersey introduced legislation legalizing some form of intrastate online gambling, most often poker. While Nevada was the first jurisdiction to legalize intrastate online gambling in 2001, Washington D.C. was the first to begin implementation. According to Washington D.C. Lottery, some of the challenges it faces are: tracking locations, complying with tax laws, processing payments, verifying age and identification, and fraud.

States that wish to allow intranet internet gambling must decide on a regulatory scheme. Iowa's Racing and Gaming Commission's report on regulating intrastate poker describes three different frameworks. The first would only allow one online gambling provider. The second would allow several limited license holders to provide online games, which could allow participation by current casino operators. Finally the third model would license multiple companies and provide regulatory oversight over a fully competitive environment (<http://www.iowa.gov/irgc/Intrastate%20Internet%20Poker.pdf>).

Lottery

In light of the DOJ opinion on the legality of online lottery sales, Connecticut may want to look to it for new revenue. Although no state currently sells individual lottery tickets online, at least four states – New Hampshire, New York, North Dakota, and Virginia – offer residents three-month to one-year lottery subscriptions which can be purchased over the Internet.

If Connecticut does not wish to sell lottery tickets over the Internet, it could pass a proposal similar to the 2011 bill: HB 6280 *An Act Concerning Interactive On-line Lottery Games*. This bill would have allowed CLC to have interactive online educational and promotional marketing programs that would allow players to simulate the lottery playing experience. CLC believes that this would boost web traffic and interest in its product, which would appeal to the changing player demographics

(http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=6280&which_year=2011).

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