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Commissioner

Viejas Tribal Gaming Commission

Testimony

Before the Committee on Resources

United States House of Representatives

Hearing on "Minimum Internal Control Standards (MICS)

for Class III Gaming"

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Thank you for the opportunity to speak to you today. It is an honor to have been invited here before your Committee.

I should first make it clear that I am here as a representative of the Viejas Tribal Government only and our expressed opinions are not meant to be and likely are not, representative of the views of all Tribal Governments and/or Tribal Regulators.

I've been asked to address Class III Gaming Regulation in general, and specifically the need and value of Minimum Internal Control Standards, and the appropriate enforcement authority.

Generally speaking we take great pride in our Tribal Governmental Gaming Regulatory Agency. We have over fifty (50) full time agents and a budget of approximately four million dollars (\$4,000,000.00) to regulate a single Tribal gaming facility. Our agency is composed of auditors, background investigations and licensing personnel (both for vendors and key gaming employees), a compliance department, inspectors/investigators on the floor 24/7, and the surveillance department.

Our professional staff is composed of numerous former city, county and federal law enforcement personnel with a combined total of 230 years of law enforcement experience with an additional 219 years of combined regulatory experience.

This is noteworthy and not unique to Viejas. Collectively, nationally, Tribal gaming agencies employ thousands of regulatory agents, with many millions of dollars budgeted for regulation at the Tribal level. We are responsible for the primary compliance enforcement of all applicable Federal, State (Compact), and Tribal laws and regulations.

Despite all of this, Tribal regulatory authorities are the least recognized. Unfortunately, there is still a prevalent notion among the media, the public, and many legislators that "if it isn't State or federally regulated, then it isn't regulated." This misperception needs correction.

Now to specifically address the role of Minimum Internal Control Standards (MICS) in Class III Gaming.

Due to the cash intensive nature of the gaming industry, a sophisticated system of checks and balances (people watching people) is unfortunately necessary to help discourage the temptation for some to misappropriate some of the Tribal revenues.

MICS can be somewhat cumbersome and often times would not qualify as supporting "process efficiency", however it is critical that a clear separation of functions, duties and responsibilities be maintained. This separation limits the scope of transactions authorized by one position, without being completed or monitored by another position.

For example, if the same person was authorized to order supplies, receive and inventory the supplies, and authorize payment for the supplies, there would be little assurance that the operation is getting all that it is paying for. A total lack of MICS in this area would allow for eventual collusion with suppliers, kick backs, fraud or embezzlement. By separating these functions into three (3) different departments, (i.e. a purchasing department to order, a receiving department to receive and verify the invoice and bill of lading, and an accounts payable department to authorize and issue final payment), we significantly reduce the risk of collusion and improprieties.

Over the course of the last ten (10) or more years, the National Indian Gaming Commission has promulgated a series of regulatory MICS requirements covering most areas where the safeguarding of Tribal assets is at stake in a gaming operation.

These MICS were a product of combining applicable and desirable provisions of other existing MICS models such as those developed by the National Indian Gaming Association (NIGA) and the Nevada and New Jersey Gaming Control Boards. The existing NIGC MICS are a product of continued revision to accommodate new technology and obsolescence, and have been formulated with the assistance of a Tribal Advisory Committee over the last few years.

Parallel to this, we must recognize that many, if not most, Tribal-State Compacts authorizing the scope of allowable Class III Gaming in a given State, also address how that gaming will be regulated. Inevitably, the agreed upon scope of regulatory requirements calls for provisions that meet or exceed industry standards for MICS.

We don't believe that any gaming operation or any Tribal, State, or Federal regulatory agency disputes the wisdom of requiring strong and effective internal controls. However, the questions of who should design, implement and enforce the controls, has created a bit of a dilemma.

As previously mentioned, historically the NIGC with the help of a Tribal Advisory Committee has drafted the internal controls for Class II and Class III Gaming. Then they required Tribal regulators to ensure implementation and primary compliance enforcement, with the NIGC field agents monitoring compliance through periodic field audits.

This all changed several years ago when the Colorado River Indian Tribes challenged the NIGC's authority to monitor regulatory compliance over Class III Gaming activity. The Tribes contended that under the Indian Gaming Regulatory Act the regulation of Class III gaming was strictly to be within the jurisdiction of Tribes and States via their Compacts, and that the NIGC's regulatory authority was limited to Class II gaming only. Subsequently, the Federal Court in the District of Columbia has upheld the position of the Colorado River Indian Tribes, ruling that the NIGC does not have authority to impose or enforce Class III regulatory MICS.

At this point in time we believe that the vast majority of Tribal operations are currently in compliance with all existing NIGC MICS. Consequently, we believe that to maintain continued compliance with the NIGC MICS in effect poses no significant new impact. However, we are also aware that for various reasons, some tribes still have not achieved full compliance.

It is also our position that it is in the best interest of Indian gaming to allow NIGC to have Class III MICS oversight thereby bolstering public confidence that Indian gaming is effectively regulated.

Having said this, should the NIGC be given that authority statutorily, we would strongly suggest that the NIGC consider giving deference to Tribes and States for MICS compliance enforcement in cases where their Compacts adequately address the scope of required internal controls. This would minimize unnecessary duplication of efforts and resources.

In addition, we also firmly believe that when Tribes have demonstrated full compliance for a period of three (3) years that they should be eligible for a certificate of Self Regulation in the Class III activity under the same conditions that the Indian Gaming Regulatory Act provide for in Class II gaming.

Once again, thank you for the privilege of being here today. I will be happy to answer any of the Committee's questions.