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Electronic bingo fight deja vu for California

Similar situation with slots occurred in 1990s

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SACRAMENTO – The widening political and legal fight over electronic bingo appears to be following a pattern that opened the doors to Nevada-style Indian casinos in California a decade ago.

A week ago, a federal judge agreed to allow charities and nonprofit groups to continue operating lucrative bingo machines while their legal status is sorted out in litigation that could take months, if not years, to run its course.

In a similar situation that played out during the 1990s, the state ultimately won a federal ruling that it was not obligated to permit slot machines in tribal casinos. But by then, the larger battle had been lost. Tribes had amassed the money, political clout and public support to get what they wanted in a public vote.

“You ain't seen nothing yet,” state Sen. Jim Battin, R-Palm Desert, warned recently about the spread of bingo machines. “This will parade like wildfire across the state.”

Battin was lecturing lawmakers who were about to block his measure to outlaw bingo machines in California. He made two other points that appeared to be lost on members of the Assembly Governmental Organization Committee.

Although Indian gaming has grown rapidly into an \$8 billion industry in California, the potential for electronic bingo may be even greater for two reasons – an almost unlimited number of charities and nonprofits could operate downtown bingo halls.

“It's an extremely dangerous development, because if it's not stopped in its tracks soon, it's going to lead to slot machines in urban areas,” said Howard Dickstein, an attorney who represents several big gaming tribes including Pala of San Diego County.

Any nonprofit or charity could seek to establish a bingo operation, he said.

“There could be hundreds, if not thousands, of them in urban areas across the state.”

In contrast, Indian gaming is restricted for the most part to the remote reservations of California's 108 federally recognized tribes.

State law gives cities and counties the discretion to authorize bingo for charities, mobile home park associations and senior citizens groups, as long as the proceeds are used for charitable purposes.

But the game legalized in 1976 used paper cards. In a series of opinions and advisories dating to 1984, the state attorney general consistently concluded that electronic versions of the game are illegal in California.

Bingo machines that play and look like slots, however, are permitted on Indian reservations and other federal lands, such as military bases.

Charities and nonprofits say that with dwindling attendance for traditional bingo, they need electronic bingo to have any chance of competing with Indian casinos.

Bingo halls and their locations must be approved by local governments, said Ravi Mehta, a lobbyist for a group of charities pushing for machines.

"The fear that there is going to be a bingo parlor on every corner in every community is unrealistic," Mehta said. "Local government regulation will have a huge impact on how much of this will occur."

Nearly a year after issuing its last warning about bingo machines, the state Bureau of Gaming Control issued cease-and-desist orders in May to more than a dozen operations scattered around the state.

"They seem to be growing," Attorney General Jerry Brown said at the time. "Instead of complying with the bulletin, they seem to have gone in the opposite direction."

But a few days before state agents were set to confiscate any machines that had not been voluntarily removed, bingo machine manufacturer Video Gaming Technologies, Inc. and a group of charities asked a federal court to intervene.

U.S. District Judge John A. Mendez issued a preliminary injunction against the state June 25. During a lengthy hearing, Mendez said state law on electronic bingo is not at all clear.

"There is no law that says what you say the law says," Mendez told the state's attorneys. The penal code section in question "has to be interpreted," he said.

The judge also questioned the attorney general's motives, suggesting he was acting at the behest of those who have warned the state could lose billions of dollars that gaming tribes agreed to pay for a guaranteed monopoly on slot machines. Tribes say electronic bingo constitutes a breach of that exclusivity.

"This is all about a political process that is pushing the attorney general to enforce its interpretation of the law," the judge said. "That's the elephant in this room."

A similar legal motion, however, was withdrawn from a federal court in Southern California and the state's attorneys remain convinced state law forbids electronic bingo machines, said Gareth Lacy, the attorney general's press secretary.

State attorneys were equally confident more than a decade ago when former Gov. Pete Wilson's administration and a group of tribes agreed to let the federal courts settle a dispute over whether the state had to allow tribes to operate slot machines.

"We thought the law was fairly clear and we ultimately did prevail," said Tom Gede, an Indian gaming specialist who was a top deputy to the attorney general at the time.

When tribes won an initial verdict in a federal trial court, they began adding hundreds of slot machines imported illegally into the state.

The tribes also had been emboldened by an earlier federal ruling that barred state and local authorities from enforcing anti-gambling laws on Indian reservations. That case stemmed from the seizure of some 300 slots from the Barona, Sycuan and Viejas casinos in 1991.

By late 1994, the state had prevailed in a federal appeals court, but tribes continued to conduct illegal gaming until March 2000, when voters overwhelmingly approved a constitutional amendment that authorized slots and Nevada-style card games in Indian casinos.

That ballot measure, Proposition 1A, as well as Proposition 5, an earlier Indian gaming initiative that was thrown out by the California Supreme Court, were bankrolled with nearly \$90 million from gaming tribes.

Like tribes, whose long history of persecution and poverty engendered deep public sympathy, charities and nonprofits are proving to be a formidable political force.

When Battin presented his proposed bingo-machine ban in the Assembly committee, he faced a hearing room packed with volunteers from charities and nonprofits wearing T-shirts emblazoned with the pointed message "Greed vs. Need."

Battin and others say the time to act is short. Electronic bingo already has become big business in Sacramento County, where operators reported nearly \$43 million in gross revenues, with most of that from machines, in the 2006-2007 fiscal year.

Bingo machines also have been found or reported in Santa Clara County, Pleasant Hill, Berkeley, Concord, Whittier, Torrance, Adelanto and Victorville. No machines have been reported in San Diego County, state and local officials said.

Santa Monica attorney Jonathan Stein has pitched ambitious electronic bingo proposals to city officials in Long Beach and Palmdale.

“To successfully generate funds for charity, a bingo operation must be able to compete with Indian casinos,” says a Web site Stein set up to promote electronic bingo. Stein could not be reached for comment.

But Gede and others say manufacturers and charities face a long, difficult struggle. It took tribes nearly a decade of legal and political wrangling, plus two expensive ballot measures, to secure the right to operate slots, he pointed out.

To change state law to permit bingo machines almost certainly would require another constitutional amendment approved by voters, he said.

It's doubtful that charities and nonprofits will soon amass the wealth tribes used to finance the ballot measures that finally legalized slots.

“The tribes had the sympathy of the public,” Gede said. “I suspect that the bingo operators and charities may think that they will be in the same position as the tribes were it ever to get to a public vote, but I'm not so sure.”

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