



Oklahoma State Capitol,
Oklahoma City, Oklahoma.

SPORTS BETTING IN OKLAHOMA

BY GRAYDON DEAN LUTHEY, JR.

The recent U.S. Supreme Court decision in *Murphy v. NCAA*, No. 16-476 (Slip Op. May 14, 2018), striking down Congressional prohibition of sports betting outside Nevada has no immediate effect on Oklahoma. Current Oklahoma law makes sports betting unlawful.¹ Accordingly, the legislature will have to adopt legislation at the least decriminalizing sports betting and the Governor must sign it for sports betting to lawfully occur in Oklahoma.

Because of the Tribal-State Model Gaming Compact, 3A O.S. § 281, decriminalizing sports betting does not necessarily mean that such gaming will lawfully occur. That compact contains an exclusivity provision conditioning the tribe's payment fees to the state on the state's prohibition of additional electronic gaming with Oklahoma. If the state allows electronic gaming in Oklahoma in violation of that exclusivity provision, the compacting tribes no longer have an obligation to pay the exclusivity fee. 3A O.S. § 281, Part 11 (A) provides:

The parties acknowledge and recognize that this Compact provides tribes with substantial exclusivity and, consistent with the goals of IGRA, special opportunities for tribal economic opportunity through gaming within the external boundaries of Oklahoma in respect to the covered games. In consideration thereof, so long as the state does not change its laws after the effective date of this Compact to permit the operation of any additional form of gaming by any such organization licensee, or change its laws to permit any additional electronic or machine gaming within Oklahoma, the tribe agrees to pay the following fees:

- 1.** The tribe covenants and agrees to pay to the state a fee derived from covered game revenues calculated as set forth in paragraph 2 of this subsection. Such fee shall be paid no later than the twentieth day of the month for revenues received by the tribe in the preceding month; and



Graydon Dean Luthey, Jr.

2.The fee shall be:

a. four percent (4%) of the first Ten Million Dollars (\$10,000,000.00) of adjusted gross revenues received by a tribe in a calendar year from the play of electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games,

b. five percent (5%) of the next Ten Million Dollars (\$10,000,000.00) of adjusted gross revenues received by a tribe in a calendar year from the play of electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games,

c. six percent (6%) of all subsequent adjusted gross revenues received by a tribe in a calendar year from the play of electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games, and

“ While the U.S. Supreme Court has created an opportunity for sports betting in Oklahoma, much must occur governmentally before that opportunity becomes reality. ”

d. ten percent (10%) of the monthly net win of the common pool(s) or pot(s) from which prizes are paid for nonhouse-banked card games. The tribe is entitled to keep an amount equal to state payments from the common pool(s) or pot(s) as part of its cost of operating the games.

Payments of such fees shall be made to the Treasurer of the State of Oklahoma. Nothing herein shall require the allocation of such fees to particular state purposes, including, but not limited to, the actual costs of performing the state’s regulatory responsibilities hereunder.

Continued on next page



EVENT SPONSORS

2018 AUTUMN CONFERENCE • PRAGUE, CZECH REPUBLIC • SEPTEMBER 5-7, 2018

GALA DINNER SPONSOR



OPENING RECEPTION SPONSOR



CLOSING RECEPTION SPONSOR



BRONZE SPONSORS



For more information on the IMGL Autumn Conference, visit IMGL.org



Continued from previous page

The compact also contains a liquidated damage provision. 3A O.S. § 281, Part 11 (E) provides:

In consideration for the covenants and agreements contained herein, the state agrees that it will not, during the term of this Compact, permit the nontribal operation of any machines or devices to play covered games or electronic or mechanical gaming devices otherwise presently prohibited by law within the state in excess of the number and outside of the designated locations authorized by the State-Tribal Gaming Act. The state recognizes the importance of this provision to the tribe and agrees, in the event of a breach of this provision by the state, to require any nontribal entity which operates any such devices or machines in excess of such number or outside of the designated location to remit to the state at least quarterly no less than fifty percent (50%) of any increase in the entities' adjusted gross revenues following the addition of such excess machines. The state further agrees to remit at least quarterly to eligible tribes, as liquidated damages, a sum equal to fifty percent (50%) of any increase in the entities' adjusted gross revenues following the addition of such excess machines. For purposes of this Part, "eligible tribes" means those tribes which have entered into this Compact and are operating gaming pursuant to this Compact within forty-five (45) miles of an entity which is operating covered game machines in excess of the number authorized by, or outside of the location designated by, the State-Tribal Gaming Act. Such liquidated damages shall be allocated pro rata to eligible tribes based on the number of covered game machines operated by each Eligible Tribe in the time period when such adjusted gross revenues were generated.

Those fees are substantial, with tribes paying to the state in excess of \$1.25 Billion since compacted gaming was first offered in 2006, with in excess of \$130 Million being paid in 2017. As a result of the compact's exclusivity provision, only tribes will be able to offer sports betting.

For tribes to offer electronic sports betting, the Tribal-State Model Gaming Compact must be amended to include sports betting within the definition of a covered game. Because of the compact's origin as an act of legislation by the people through referendum, and at least one major amendment by the legislature through statute, an amendment to the compact to include sports betting as a covered game must be adopted by statute either by the legislature and governor or by the people through initiation or referendum. Such an amendment likely would also decriminalize sports betting. That legislation process, if it occurs, will not occur in a policy vacuum, but will be part of a legislative session addressing state revenue needs.

“For tribes to offer electronic sports betting, the Tribal-State Model Gaming Compact must be amended to include sports betting within the definition of a covered game. Because of the compact’s origin as an act of legislation by the people through referendum, and at least one major amendment by the legislature through statute, an amendment to the compact to include sports betting as a covered game must be adopted by statute either by the legislature and governor or by the people through initiation or referendum.”

If a compact amendment is adopted through legislation, any tribe that is a party to the compact desiring to offer sports betting must then adopt the amendment. For such adoption to become effective, the Secretary of the Interior, or his designee, must approve the amendment, or allow forty-five days after submission to pass without disapproval. *See*, 25 USC § 2710 (d)(3)(B); 25 CFR 293.10 (a), 293.12. If no increase to the existing exclusivity fees is made by the amendment, the chances for approval are enhanced. If an increase in the fee is included, approval becomes more problematic. Any approval by the Department, whether active or by inactive, then must be published in the Federal Register within 90 days of receipt of the Amendment by the Department of Interior's Office of Indian Gaming. 25 CFR § 293.15 (b).

While awaiting Secretarial approval, a tribe likely will review its gaming ordinance to determine if any amendment is required to offer sports betting and, if so, then adopt such an approval and submit to the Chair of the National Indian Gaming Commission for approval.

While the U.S. Supreme Court has created an opportunity for sports betting in Oklahoma, much must occur governmentally before that opportunity becomes reality. Finally, any reality depends on Congress not pre-empting the states by constitutionally compliant legislation. ✨

Graydon Dean Lutbey, Jr. is a senior partner at GableGotwals in Tulsa, Oklahoma, and General Counsel of the Oklahoma Indian Gaming Association. He regularly handles litigation and administrative agency matters for Tribes and entities with which they do business. He has argued for Tribes before the U.S. Supreme Court. The views expressed in this article are his alone and do not necessarily reflect the views of his firm, the Oklahoma Indian Gaming Association, its members or his other clients.

¹ 21 O.S. §§ 941, 982.