

Gambling? Just look away

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No activities permitted by subsection shall employ any form of casino gambling including, but not limited to, blackjack, craps, roulette, poker, baccarat, keno and slot machines, or employ any electronic or electromechanical imitation or simulation of any form of casino gambling.

It was reported last week that the Coeur d'Alene Tribe plans to add a poker room at the Worley casino. The tribe's spokesman said the poker room will help the Coeur d'Alene Tribe better compete with Indian casinos in Spokane where such games are offered.

Which is true.

But some people think this is a significant move by the tribe because adding poker would be a clear violation of the state constitution. Some people think there is no way Governor Butch Otter or Attorney General Lawrence Wasden can allow the Coeur d'Alene Tribe to so brazenly flout the constitution. They believe this will result in a showdown between the state and the tribe.

But they would be wrong.

Adding poker would really be no big deal as far as how it relates to state law. That's because gambling offered at the Coeur d'Alene Casino has always been in violation of the state constitution.

The item that appears at the top of this column is taken directly from the Idaho Constitution. The language is part of an amendment that was approved by Idaho voters in 1992. The amendment was adopted as part of the effort to start a state lottery. Before the state could launch the lottery, the constitution had to be changed.

The intent of the amendment is unambiguous. Idaho voters endorsed a state lottery but did not vote to allow casino-type gambling in Idaho.

And the restriction is not limited to poker. The last 15 words of the excerpt above – those that are underlined - deal directly with the slot machines that populate tribal casinos today. The language is clear. The state constitution forbids those machines in Idaho.

We can quibble about what to call the machines. Supporters of tribal gambling claim they are not slot machines. But even if we pretend they are not slot machines, it is clear they are an *electronic or electromechanical imitation or simulation* of a form of casino gambling – you know, slot machines.

Indian casino supporters will say that a voter initiative passed in 2002 makes Indian 'video gaming machines' legal. But of course the only way to change the constitution is to amend it, a process that requires 2/3 approval by the legislature. Tribes recognized that would never happen

and pushed the voter initiative in an effort to stymie critics who charged ‘video gaming machines’ are illegal.

And it worked. At least with the elected officials who matter.

Indian casinos in Idaho have operated outside the law since they first opened and state officials have chosen to look the other way. Our prediction is they will continue to do the same when the Coeur d’Alene Tribe opens poker rooms. That is true for a couple of reasons.

First, few politicians want to take on Indian tribes because they don’t want to be labeled as racists. It doesn’t matter if the charge is ridiculous; the surefire way to win the argument is to scream racism when the other guy disagrees. This is something we know a bit about firsthand.

Second, no politician wants to be accused of killing jobs. The Coeur d’Alene Tribe employs hundreds and hundreds of people and most work at the casino. Any threat to Indian casinos would immediately become a debate about jobs. Nobody wants to run on a platform that includes killing jobs. If a candidate has to choose between upholding the constitution and winning an election, winning elections usually wins.

The good news is there is a way that politicians can run for re-election and not have to answer questions about illegal gambling.

Simply allow anyone and everyone with the finances and know-how to open a casino. Tribal casinos are viewed as critical for economic development. Given that standard, allowing more casinos would mean more jobs and more revenue for everyone.

Critics will say that is not possible. They argue that Idaho voters would never change the state constitution to allow gambling. Even if Idaho voters would approve gambling, such a move would never clear the legislature. But recent history shows us ballots and votes are not always required to bend the constitution.

Perhaps state leaders could simply continue to look the other way. – *Dan Hammes*