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Gambling and the Law®: Almost the Law

Law school classes are conducted using the case method. Students are given published court opinions and then questioned on what they deduce the law is. This produces lawyers with the mistaken belief that the first place to look when conducting legal research is reported cases.

It is dangerous to forget that the final say on the law still usually means a bill that has been approved by a legislature and signed by the executive.

With a few important exceptions – Indian gaming, interstate horseracing and Internet gaming – it is state legislatures, not the federal government, who determine the most important issues involving legal gambling.

So, what are the big issues facing lawmakers? Looking at the bills that were introduced in state legislatures over the years shows us not only what is being proposed, but what actually becomes law.

Almost every state is looking at expanding legal gaming. The Hawaii Legislature had so many proposals to legalize gambling that it passed a Resolution, now gone, declaring no new gaming proposals.

Yet in every state, almost all expansion bills still can't get out of committee.

But one occasionally does pass and is signed into law. These inevitably lead to more proposals for expansion, never reduction.

States start with legalizing charity bingo and licensing horseracing. There still are a few that don't have state lotteries. But the current trend is proposals for racinos. This year, they were approved for Ohio. And once slot machines or video lottery terminals are introduced, there are always campaigns to expand with table games, as recently happened in West Virginia and Delaware.

Delaware has the additional advantage of being one of the few states grandfathered-in under the federal Professional and Amateur Protection Act, with the right to take sports bets through its state lottery. I was hired by the Delaware State Lottery to recommend what the tax rate on the new sports books should be.

But expansion is still the exception, not the rule. The gaming industry has gained

great political power in many states, but card clubs and casinos still lose most of their battles. This is particularly true when they want restrictions relaxed, such as being able to operate longer hours or higher stake games. And forget about getting tax rates reduced, unless there have been a few high-publicity bankruptcies. The failure of almost every bill having anything directly to do with gaming and money, except raising taxes, shows how important it is to make sure everything is done right when legal gambling is first introduced into a state.

Legal gaming is especially politically weak when confronted with widespread social movements. Having legislators mandate such things as smoke-free rooms can hurt business when there are direct competitors, such as tribal casinos, that don't have the same restrictions. The casinos in Black Hawk, Cripple Creek and Central City did not celebrate when Colorado repealed their exemption from the "Colorado Clean Indoor Air Act."

Every proposal to bring in legal gaming now includes provisions to help problem gamblers, such as proposal in California to keep ATMs off the gaming floor.

Casinos are still viewed as slightly immoral deep pockets. So, bills to exempt businesses from burdensome taxes, in states like Colorado, Indiana, Kansas and Nebraska, or to preserve historic buildings in Montana, expressly exclude casinos from the benefits of the new laws.

One Connecticut representative introduced a bill that could create a national nightmare for casinos and players: to tax out-of-state visitors on all they have won at casinos in the state.

States are ramping up their competition for the gaming dollar. The Louisiana Legislature created a committee to study "the effects of Mississippi's decision to land-base its casinos." We know what the recommendations will be: "a study is necessary for the state to determine whether a move to limited inland gaming would also lead to increased economic development in this state..."

But Tom Burch, a Kentucky Representative, had the ultimate solution for competition. He introduced a resolution that Kentucky send a submarine to sink any Indiana riverboat casino that strayed onto its side of the Ohio River.

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