

So, there will be more opportunities like the recent successful campaigns to bring casinos to the four largest cities in Ohio. Governors and legislators are looking at gambling as a painless tax. We will see more attempts like New Jersey's to bring in sports betting, more bills like Ohio's to turn racetracks into racinos, and more proposed amendments to existing laws, as in Pennsylvania

and Delaware, to add table games to racinos, making them into true casinos.

Most of the time, the attempts at expansions will fail. But regardless of whether we are in a "V," "W" or "L," legal gaming is going to continue to spread and grow. ■

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As we commence the second decade of the 21st century, the same tribal gaming issues that have been "hot" since the passage of the federal Indian Gaming Regulatory Act (IGRA) more than

two decades ago, will continue in 2010. Off reservation gaming, compacts, sovereign immunity and Class II gaming remain at the top of the list.

Let's start with "reservation shopping." With the new Obama administration in place, many observers expected the loosening of restrictions on off reservation tribal land applications for gaming. Although the Secretary of the Interior had been advising since early fall that an announcement would be forthcoming "soon," nothing had materialized as of late 2009.

Just as in the real estate market, "location, location, location" is equally critical to the success of a tribal casino. More than 30 land-into-trust applications are pending review before the secretary, with many seeking land near or within urban centers. These applications range from land in Glendale, Ariz., next to the Arizona Cardinals football stadium to land overlooking San Francisco Bay to land near New York City in the Catskill Mountains to numerous locations in between. Be on the lookout for a decision by the Department of the Interior "soon" in 2010—whatever "soon" may mean.

Related to the reservation shopping controversy is pending "Carcieri Fix" legislation. In 2009, the U.S. Supreme Court in *Carcieri v. Salazar* called into question the Secretary of Interior's ability to take land into trust for tribes recognized after 1934. Understandably, several tribes immediately sought a "legislative fix" in light of the ruling. The Obama administration has publicly supported such a fix and also is considering other options to remedy the dilemma if Congress does not act on the matter in 2010.

Then there's the big question: Will the Florida Seminoles finally have a Class III compact that everyone agrees on in 2010? The Seminoles have been battling for a compact since IGRA was passed in 1988. Notwithstanding that a compact signed by the tribe and the Florida governor passed muster with the secretary and was published in the Federal Register in 2008, the Florida legislature has pursued litigation and other wrangling to undo the compact. All the parties in interest seemed close to a deal

this past year, but negotiations fell by the wayside. Nevertheless, the Seminoles continue to successfully operate their Class III casinos. To date, the National Indian Gaming Commission (NIGC) and other federal authorities have declined to take any adverse actions against the Seminole operations. It's anyone's guess what 2010 will bring, although this prognosticator believes that "peace" will finally reign in the Sunshine State.

With the economic downturn hitting even the tribal gaming industry, discussions about "loan defaults," "bankruptcy" and "restructuring" have become more prevalent—and it's expected that such discussions will continue into 2010. Because the gaming operations are located on tribal sovereign lands, the traditional commercial remedies in default situations available through bankruptcy law and other creditor protections may not be applicable. The highly successful and glitzy Foxwoods Resort Casino, owned by the Mashantucket Pequot Nation, made

headlines when the tribe warned that it would likely default on some of its financing obligations in late 2009. The nation is currently negotiating with its creditors to restructure more than \$2 billion in debt. With the economy still struggling, expect there to be more tribal casino defaults in 2010. As a result, the sovereignty issue will surely be tested as new precedents are set going forward.

Class II gaming will continue to be a battleground in 2010. With the departure of NIGC Chairman Phil Hogen in the latter part of 2009, the interim Chairman George Skibine made a decision to delay the effectiveness of certain Class II regulations until the fall

of 2010. The situation will continue simmering, particularly with scrutiny focused on how Alabama ultimately determines how to handle charitable bingo. Many of the gaming manufacturers providing electronic bingo machines to the Alabama establishments also market similar machines to the tribal Class II market.

Finally, it is expected that a new NIGC chairman will be appointed in early 2010. The new chairman will certainly have his or her own ideas as to the direction of the NIGC and tribal gaming in general. As such, this person will likely play a significant role in shaping the course of tribal gaming in 2010.

Stay tuned. There's never a dull moment in tribal gaming. ■

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