

# GAMING LEGAL NEWS



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## INTERNET GAMING IN D.C. – A TOTAL ECLIPSE OF THE SUN?

by Dennis J. Whittlesey

Internet gaming in the District of Columbia continues to face setbacks that signify it is unlikely to commence anytime soon. Events occurring over the past week strongly indicate that D.C.'s bid to be the first state to offer intrastate gambling will be stymied, leaving the "Race to Be First" wide open.

From Massachusetts and New Jersey in the east to California in the west, government officials are looking at internet poker and other games as a partial solution for their economic woes. In addition, lottery operators everywhere see online gambling as a way to avoid becoming another bricks and mortar memory. Even the President of the American Gaming Association, Frank J. Fahrenkopf, Jr., views internet gaming favorably provided it is in an appropriate format.

The stakes are high, and it was widely assumed that the District of Columbia would be the first United States jurisdiction to offer intrastate internet gaming. Indeed, internet gambling in D.C. appeared to be a *fait accompli* when it was legislated as federal law late last year as part of a budget amendment. With that law in place, it was universally assumed that D.C. would be the first jurisdiction to commence true internet gaming. Operations were initially scheduled for a mid-summer kickoff, but it then was postponed until the fall. It is now on indefinite hold, and many believe that the political intrigue regularly generated within the D.C. government places implementation of the legislation in doubt.

While a great deal of planning and expense has been spent on the project, it has become the subject of debate within the D.C. Council, which is the legislative body for the District of Columbia, to the point that some Council members are advocating repealing the underlying statutory authorization.

The political fight started when various members of the D.C. Council questioned the circumstances under which the prospective internet gaming operator was awarded the internet contract pursuant to provisions of its lottery contract. Now there is federal court litigation that raises serious questions concerning allegedly political actions to

sidetrack the award of the original lottery contract in 2008. Moreover, citing “interviews and government documents,” *The Washington Post* is currently reporting that the growing questions about the lottery contract have drawn the attention of the city’s Inspector General. Among the issues now in open debate is the fact while the lottery contract is more than 200 pages long, the section providing for internet gaming is “thin.” While sparse, that section appears to establish a clear division of revenues between D.C. and the lottery operator, but even that provision is now being hotly debated.

The general consensus is that the 2008 contract award was the product of a fair and competitive bidding process. Indeed, there were findings that the contract would save the District money and deliver a superior product. The federal litigation was filed by a former lottery procurement officer alleging that he was fired for resisting what he saw as improper political pressure to reject the results of the competitive bidding process. In fact, that contract was killed through the D.C. Council’s delay in approving the contract. After adding a local business partner to its proposal, the lottery company bid during the subsequent process and again won the contract. Political opponents to the lottery contract award then began raising questions about the qualifications of the partner, and the complaints have targeted both the 2008 contract award as well as the lack of competitive bidding for the internet gaming contract.

The growing controversy culminated in last week’s proposal by several members of the D.C. Council for an outright repeal of the internet legislation. In reporting all of this, the *Post* described internet gambling as facing “long odds” in D.C. The accuracy of the *Post*’s assessment remains to be seen.

## THE COMMONWEALTH OF MASSACHUSETTS AND THE MOHEGAN TRIBE OF CONNECTICUT – A TALE OF NON-INDIAN GAMING

by Dennis J. Whittlesey

After years of talk and more talk, starts and stops, and then more talk, the Legislators on Beacon Hill appear certain to enact a casino bill within the next two weeks. Now fueled by a new poll showing that 56 percent of Massachusetts residents favor casino gaming, the debate will be centered on how many licenses to issue, the geographical locations for each licensed facility, and whether there should be an “Indian preference” for a casino in the southeastern part of the state to accommodate one of the state’s two federally recognized tribes of Wampanoag Indians.

As of this time, the most likely development is authorization of three casinos and a slot machine parlor. The location of each would be generally dictated by the final legislation.

Reports from the state capitol building strongly indicate that the Indian preference for one location is likely to be part of the final package,

and both of the state’s two recognized tribes have expressed interest in securing that license. However, various versions of the legislation would impose a requirement that the successful tribal applicant must first have its proposed casino site taken into trust by the federal government with a formal certification that it qualifies for gaming under the federal Indian Gaming Regulatory Act. This necessitates a complicated process that can take years for final approval, since the trust application must fully comply with the National Environmental Policy Act, including development of a comprehensive, formal Environmental Impact Statement. Meanwhile, the other successful applicants can move quickly to develop their casino projects and commence gaming without the overlay of federal review, comment, and – as often happens for trust acquisitions – litigation challenging the trust acceptance pursuant to the federal Administrative Procedure Act.

The Mohegan Tribe of Connecticut has a better idea.

Following the model it developed for its successful application for a state-licensed, *non-Indian* gaming project in Pennsylvania, the Mohegans are working with the western Massachusetts town of Palmer on plans to build and operate a casino within its municipal boundaries. And like the Tribe’s Pennsylvania facility, it would be licensed under state law and not as an Indian gaming facility. To nobody’s surprise, Palmer has emerged as a leading contender for one of the regional licenses. The Tribe already has a long-term lease on the project site, opened an office in downtown Palmer about a year ago, and has been meeting with officials and residents on a continuing basis.

In the world of gaming, there is no such thing as a “done deal.” However, the potential marriage between the Mohegan Tribe and its friends in the Commonwealth just might come close.