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Aug
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AGA iGaming Strategy May Shift Away from US Regulation to State-by-State.

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Rumors are swirling in the DC-Beltway that power meetings amongst major gaming stakeholders and prominent politicians have not gone so well of late.

Some of the major gaming industry players included the following protagonists: Patti Hart of IGT; Gary Loveman of Caesars Entertainment; Jim Murren of MGM; Deutsche Bank managing director Drew Goldman; Jamie Odell of Aristocrat; and Tim Wilmott of Penn National. The meetings apparently included face-to-face conversations with Valerie Jarrett, one of President Obama's closest advisors in the White House; Senate Majority Leader Harry Reid; Senate Minority Leader Mitch McConnell; House Speaker John Boehner and House Minority Whip Steny Hoyer, among others.

The AGA's new chief, Geoff Freeman, frustrated by a lack of any real movement on the federal legislative level recently commented that "there will come a time, if Washington does not act, that the AGA will be driven to change its approach. I hope we don't get there. But if we are not successful in Washington in getting legislation passed, our position is certain to evolve" he said.

It's unclear what new strategy the AGA would adopt on the emerging iGaming and iPoker market sectors within certain States inside the US; but one would expect it to be an approach embracing State-by-State regulatory regimes augmented by potential State compacts amongst those States already licensing and taxing iGaming and/or iPoker operations within their respective States.

Ideally, the AGA and its brick and mortar focused members — and particularly Caesars which has seen the growth of iPoker vis-a-vis its World Series of Poker brand — would have preferred that federal legislation would have passed by now, thereby fending off the various competing States, many with much larger populations than Nevada, from regulating the online gaming markets in the US.

Despite strident efforts by politicians supported by the AGA in the Lame Duck session of Congress in 2010, federal gaming legislation efforts failed during the

last week of the session due largely to macro politics which killed a potpourri of attachments being latched onto Lame Duck session Bills that were thought to be “must-pass” legislation at that time. Then, federal efforts got really nowhere in 2012 as the Nevada-centric efforts helmed by Senator Reid (and long-time gaming opponent Senator Kyl) were so disliked by non-AGA gaming stakeholders that a Bill was not even introduced in 2012 despite smoke and mirror efforts of AGA members who supported Reid being uncovered and not being so stealth after all as other gaming stakeholder opponents behind the scenes lobbied hard and fast to expose what a draconian Reid-Kyl iGaming prohibition and iPoker carve out Bill would most likely look like despite the commentary of some to the contrary.

Several years ago, preventing States like New Jersey, Delaware, and Nevada from enabling iGaming regulatory structures, and in the case of Nevada, poker-only schemes would have been far more lucrative for the AGA members because ongoing federal legislative attempts thus far have still favored Nevada gaming corporations (many of whom are AGA members) and either minimized — or in some cases even excluded — many other gaming stakeholders, including, but not limited to, State Lotteries, Tribal gaming interests, Cardrooms, Racetracks, and the like.

But alas for the AGA members, that has not come to fruition yet and may die on the vine again this year. Meanwhile, many larger States like California are now on the cusp of legislating iPoker within its borders with many other States looking at doing likewise or even more in licensing online gaming for house-banked casino style games, bingo, lottery, and other games.

But don't count out the AGA power brokers just yet on the US federal legislative front.

By labeling regulatory efforts as an iGaming “prohibition” instead of enabling online activity, certain interested stakeholders who are not sold on iGaming just yet — and may not be in the foreseeable future (and, who like AGA members have similar competitive business reasons for proscribing online gaming by others in this huge eCommerce market sector) — would seek to stop online gaming rather than expand it. Of course, those opposed to gambling generally will be in favor of any efforts to proscribe US citizens from doing whatever they like with their own money regardless of the iGaming Wars among the gaming interests and who wins and loses them depending on State and Federal regulatory scenarios. As a logical result, there may well be fighting chance for the AGA members to unite with such like-minded “prohibitionist” stakeholders (and traditional puritanical prohibitionists) to get an iGaming prohibition they mistakenly all thought they had (or wish they had) with the federal Wire Act which never was intended to cover anything but sports betting in the first place. But logic and politics don't necessarily translate to anything in the District.

As the AGA members begrudgingly know, the US Dept. of Justice itself finally admitted as much a couple years ago when formally reversing its policy stance that the Wire Act supposedly covered more than sports betting. So, the new

federal prohibition notion would be this: have a new and crystal clear iGaming prohibition throughout the US in order to achieve, legally speaking, what state of affairs AGA members and other gaming folks thought they had before the DOJ adopted the same legal position as the US Federal Courts had already done many years ago. Getting back to that perceived “default setting” works for many gaming interests.

Then, bolted onto such a federal iGaming prohibition could be a carve-out for iPoker, which really isn't gambling but is skill-based gaming in the eyes of most knowledgeable legal minds and poker players today. That'd be wonderful in the eyes of iPoker players in the US who had the rug pulled out from underneath them in April of 2011, but probably not so great for any other iGaming activity not also carved-out in some fashion either now, or perhaps down the road with further iGaming carve-outs.

However, there's an even better reason from the AGA member perspective for such a carve-out for poker having nothing to do with making US iPoker players happy: unlike larger States such as California that have enough residents and visitors to support an intra-State market for peer-to-peer iPoker (as compared and contrasted with house-banked casino games which do not require player liquidity), Nevada and New Jersey based AGA members would greatly benefit from a so-called “poker carve-out” that AGA members would largely control and endeavor to exclude California, Illinois, Florida, New York, Texas and any other States who may seek to regulate, tax, and license iPoker by virtue of the gaming licensing bodies qualifications and other clever provisions that establish certain parameters within the federal laws intended to favor the AGA members — just as those efforts in 2010 and 2012 attempted to accomplish.

Failing all of that, the AGA members will be forced to look at the State-by-State approach.

So, is the AGA's new chief trying to downplay US federal efforts on the iGaming and iPoker front — perhaps to lull various competing stakeholders, States, and Tribes into a false-sense of security? Or is it a tacit admission by the AGA chief that Washington politicians will indeed be pulling a rabbit out the hat to get anything done on the federal level before even more States enable some forms of iGaming, iPoker, Lottery games, etc? All of the above? Neither?

It's hard to say and forecast what moves the AGA and its key members will next make in these iGaming Wars amongst the various stakeholders. But this much is certain, the AGA will never give up looking out for its members. After all, isn't that what trade associations are supposed to do anyway?

Stay tuned ... these internecine wars amongst a wide variety of stakeholders and competing gaming interests are not over by a long-shot on any of these battle fronts!

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