

# Don't be fooled on Indian gaming

*Daily Hampshire Gazette*

By Stephanie A. Levin

NORTHAMPTON - Gov. Deval Patrick and other casino proponents are urging the Legislature, if it comes back into session, to try again to pass a Massachusetts gambling bill this summer. But unfortunately, some casino supporters, including state Sen. Stanley Rosenberg, are seeking to add urgency to the situation by pushing the argument that the Commonwealth needs to act fast, before the state's Indian tribes do. ("Gambling delay could give tribe upper hand," *Daily Hampshire Gazette*, Aug. 11).

This argument, however, at best misunderstands Indian gaming law, or at worst, is a bluff misrepresenting that law to create needless pressure to act.

What controls American Indian tribes' rights to conduct legal gambling operations is a federal law called the Indian Gambling Regulatory Act (IGRA), passed by Congress in 1988. And that statute makes it crystal clear that tribes can only run casinos on their own reservation land, or on land owned by them prior to 1988, with very limited exceptions.

Since the Mashpee Wampanoags have no reservation land or land acquired prior to 1988, they would have to rely on one of two possible exceptions to obtain land for a casino.

To open a casino in southeastern Massachusetts, as they've been intending, would require not only that the federal government agree to take the land into trust for the tribe (a difficult proposition in itself), but also - to quote the law - that the "Governor of the State ... concurs" that a gaming establishment on this land would be a good idea.

In other words, Patrick would have to be consulted and agree to a tribal casino before the federal government could take the land into trust - the tribe can't simply go ahead on its own.

The second exception that would allow the Wampanoags to proceed with a casino proposal applies to land that the federal government would designate as the tribe's initial reservation, since they have no reservation now. But, as one of the only accurate legal points in the Associated Press article in the *Gazette* cited above explains, a 2009 Supreme Court decision makes it much harder for the federal government to take land into trust for tribes, and this process - if it happens at all - will certainly take a very long time, probably years.

Even if it were to occur, an initial reservation would give the tribe only the right to request negotiations with the state on the possibility of opening a casino - it would not give it the right to proceed with casino development on its own.

Sen. Rosenberg made the claim in the same article that if the state approved a Mashpee casino and if it gave it exclusivity that would "drastically limit ... the state's gambling market."

Those are two very big "ifs." And although a supposed University of North Dakota expert suggested that the federal government would insist that exclusivity be granted to the tribe, there's nothing in IGRA to support that opinion.

The law requires only that a tribe negotiate in good faith with a state to reach a compact, or agreement, about the terms under which a tribal casino would operate, covering such items as licensing, law enforcement and sharing of revenue.

As long as good faith is present on both sides, the feds don't dictate any specific provisions. Finally, the article erroneously states that the Mashpees could "open an electronic bingo parlor - virtually indistinguishable from a slots parlor" without any state input. But federal and state court decisions create legal precedent for the proposition that the right to run bingo games does not equal the right to profit from fake "bingo" slot machines.

So Sen. Rosenberg's concern that "You want the state to drive the development [of casinos] ... not the ... Native Americans" has no basis in reality.

The law leaves the Commonwealth's hands firmly on the steering wheel of gambling policy, turning us right back to the underlying, critical question: Are legalized gambling casinos good for the Commonwealth's citizens or not? That needs to be decided based on the real issues - which are the economic, social, and other impacts of casino gambling - not on the basis of fabricated scare tactics about how the tribes are going to get there first.

*Stephanie A. Levin is a lawyer and teacher of legal studies at Hampshire College. She has researched, written, and testified before state legislatures about the legal regulation of Indian tribes and Indian gambling.*