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The MICHIGAN GAMING Newsletter



POKAGON BAND ANNOUNCES RE-ELECTION OF TRIBAL COUNCIL CHAIRMAN JOHN P. WARREN

On Thursday, July 16, 2015, the Pokagon Band of Potawatomi Indians ("Tribe") announced the results of its general election for Tribal Council that occurred on Saturday, July 11. The Tribe reported that John P. Warren, the current Tribal Council Chairman, was re-elected to the position. Warren was previously elected as Chairman in a special election held in January 2014 after the previous chair retired in October 2013.

In addition to his duties as Tribal Council Chairman, Warren will continue to serve in his position as Chairman and CEO of the Pokagon Gaming Authority Board. The Board oversees the Tribe's Four Winds gaming properties located in Buffalo, Hartford, and Dowagiac. Warren has served in various capacities with the Tribal Council since 2006.

Also elected on Saturday were Mark Parish (Secretary), Matthew Wesaw (Member-at-large), Becky Price (Member-at-large), and Judy Winchester (Elders Representative).

The Tribal Council consists of 11 members elected on staggered, three-year terms by the Tribe's citizens and is the primary governing body of the Tribe.

MOODY'S ANNOUNCES OUTLOOK FOR U.S. GAMING INDUSTRY

On Tuesday, July 14, 2015, Moody's Investors Service released an announcement that it has revised its outlook on the U.S. gaming industry

from negative to stable. The outlook status was changed to negative in June of 2014 due, in part, to declining revenues. Moody's reports that since this time the trend has reversed, with revenue expected to increase over the next 12 to 18 months. A full copy of the report can be accessed by Moody's research subscribers by [clicking here](#).

"The stable outlook reflects our view that gaming revenue, which is a leading indicator of company profitability, will increase up to 2% each month on a year-over-year basis over the next one to two years," says Senior Vice President, Keith Foley. "This will translate to a 3% to 4% increase in industry EBITDA during the same period."

According to the announcement, in total, the 18 states Moody's tracks reported a 4.1% increase in year-over-year monthly gaming revenue in May 2015 and a 4.0% increase in April. In May, all but New Jersey and Connecticut saw improvement. And though new casinos in Maryland, Ohio and Louisiana contributed to the increases, revenue grew even excluding those states, suggesting that the amount of revenue cannibalized from existing casinos could be easing.

"[The] Moody's report highlights that even in the face of intense competition, the gaming industry is finding ways to grow and serve as strong community partners," stated American Gaming Association President and CEO, Geoff Freeman. "However, it's incumbent upon state officials to review their gaming policies to ensure they promote innovation and reinvestment that will spur greater growth, create more jobs and provide additional tax revenues that support vital public services."

"Our revenue and EBITDA forecast for the US gaming sector incorporates our view that US consumers, who remain under pressure from weak growth in disposable personal income, will continue to limit their spending to items that are more essential than gaming," Mr. Foley states.

COMPLIANCE SUMMARY— POLITICAL CONTRIBUTION RESTRICTIONS

In addition to its regular coverage of gaming news, The Michigan Gaming Newsletter will be providing compliance updates and summaries of the various legal and regulatory requirements for companies involved in the state's gaming industry. This week, we have included a review of the political contribution requirements that affect gaming licensees. The following is a general discussion of the state's compliance requirements and should not be considered legal advice.

Those operating in the state's casino industry should be aware of the strict political contribution guidelines contained in the Michigan Gaming Control and Revenue Act ("Act") and monitored by the Michigan Gaming Control Board ("MGCB"). Such restrictions are not uncommon in gaming jurisdictions and have been designed to prevent any appearance of conflicts of interest or unscrupulous dealings.

History

As originally drafted, the political contribution restrictions in Section 7b of the Act contained broad language that applied the restrictions on political donations to state, state legislative, and local elective offices to all licensees, key persons, interest holders in licensees, including the spouses and close family members of these individuals. In addition, the Act prohibited contributions made for a period of one year prior to an individual applying for any MGCB operator or supplier licensee.

However, on December 17, 1998, then Michigan Attorney General Frank Kelley issued Attorney General Opinion No. 7002, which concluded that certain sections of the original political contributions restrictions were unconstitutional. Specifically, the order opined that the restrictions placed on political contributions made by spouses and close family members, as well as the restrictions on contributions made one-year prior to applying for a license as applied to supplier licensees were unconstitutional (the opinion,

however, concluded the one-year retroactive restrictions as applied to casino operator licensees was constitutional). In addition to the 1998 Opinion, two additional Attorney General Opinions (#7086 August 10, 2001 and #7099 January 9, 2002) have been issued which further clarify the application of Section 7b.

Current Restrictions

The current law prohibits casino and supplier licensees from making political contributions to any state or local political candidates or any “holder of any state, legislative, or local elective office.” MCL §432.207b(a)(ii). In addition, the restrictions apply to those political action, candidate, or independent committees that donate to candidates for state or local offices.

Therefore, as a general rule, if a donation has the possibility of funding a state or local candidate, even if it is through a political action or similar committee, then the Act prohibits the contribution. These restrictions, however, do not apply to candidates for federal elective office. Notably, the restrictions also do not apply to ballot question committees.

The parties covered by Section 7b of the Act are those entities or individuals holding a casino or supplier license issued by the MGCB. This includes individuals holding a 1% or greater ownership interest in a licensee, officers or managerial employees of a licensee, and officers or managerial employees of entities that hold a 1% or greater interest in a casino or supplier licensee.

Political contribution restrictions apply as long as the casino or supplier is licensed by the MGCB and for a period of three years following the expiration or termination of the license. In addition, the restrictions apply to any contributions made one-year prior to an individual or entity that is applying for a casino operator license.

Violations of Section 7b can result in a felony punishable by imprisonment for not more than ten years or a fine not more than \$100,000 or both and/or immediate licensing action by the MGCB, including revocation of a license (Section 18(1)(f)). The MGCB has and continues to strictly enforce these provisions, so it is important for

those covered by Section 7b to closely monitor any political contributions to ensure that they are in compliance with section 7b of the Act.

Casino Interest Registration Act

In connection with the Act, the Michigan legislature passed the Casino Interest Registration Act (“CIRA”) in order to assist the state Attorney General, MGCB, and other interested parties in monitoring compliance with the Act’s political contribution restrictions. In accordance with CIRA, all entities or individuals who hold a 1% or greater interest in a casino operator licensee and have not been otherwise exempted from compliance with CIRA must complete a short, one-page registration form and submit the same to the Michigan Bureau of Elections.

The Michigan Bureau of Elections maintains a list of all registrants under CIRA and publishes this list bi-annually. The list contains the names of those entities or individuals who have registered and is used, in part, to cross-check political donor lists for prohibited contributions.

Registration with the bureau must occur within five days of the MGCB granting the entity or individual’s license application, including those applications for a transfer of interest in a casino licensee that results in the entity or individual acquiring more than 1% ownership interest in the casino licensee. Those who fail to register face civil fines and/or misdemeanor criminal penalties.

Those interested in furthering their understanding of the MGCB’s political campaign restrictions, including CIRA’s registration requirements, can refer to the agency’s summary of the applicable laws and regulations located at the following link: http://www.michigan.gov/mgcb/0,1607,7-120-57144_57145-245363--,00.html