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Schwarzenegger Broke the Law in Tribal Compact Negotiation

When former Gov. Arnold Schwarzenegger campaigned for office in 2003, he insisted his predecessor, Gray Davis, had been too generous in casino compact agreements with California Indian tribes. To stem the state's growing budget deficit, Schwarzenegger vowed to make tribes pay their "fair share" in any agreements he negotiated.

Schwarzenegger extracted tens of millions of dollars for the state general fund in deals he struck with 19 of California's tribal governments. But his demand for \$38 million, a 95 percent cut of new earnings, from San Diego County's Rincon Band of Luiseño Indians' request to add 900 new machines landed his administration in a losing federal court battle.

The federal Indian Gaming Regulatory Act (IGRA) allows tribal "revenue sharing" only for specific purposes such as offsetting regulatory costs and impacts of casinos. Otherwise it's a tax, and states can't tax tribes. Indian tribes are governments, and governments don't tax other governments.

The Supreme Court declined review of the case, sending it back to the San Diego Court, which has given Rincon and the state - now led by a new governor - 60 days to negotiate a deal or submit to arbitration.

Schwarzenegger "Fair Share" Demands were not Fair or Legal

No one could really ignore the egregious nature of the monetary demands. Even the administration's own economic consultant, Dr. William Eadington, told the state that there was no financial advantage or incentive for the tribe to expand under Schwarzenegger's taxing scheme.

All of which leads to a key question facing Gov. Jerry Brown: If tribes should pony up revenue-sharing for additional slots, or new compacts what's a "fair share?"

Tribal governments also asked, "What is a 'fair share'?" Tribes asked California voters what they thought a fair share would be. And, as it turned out, voters understood fair share, even if Schwarzenegger never intended to.

Californians Want Tribal Fees for Casino Gaming to be Fair

A statewide poll conducted last August by the national opinion research firm of Fairbank, Maslin, Maullin and Metz, showed 75 percent of respondents thought tribes - even though they can't be "taxed" - should pay the equivalent of taxes, levied on businesses and corporations.

California corporate taxes range from 1.5 percent to 10.84 percent, depending on the type of business. However, this is after making deductions for overhead and operations. The Schwarzenegger administration was demanding the Rincon Band pay 10-15 percent on gross revenue, not net earnings, which amounted to a 40-50 percent tax.

Courts Clarify Compacting Rules for Tribes and State

The Courts said, since tribes are governments and the primary purpose of gaming is to benefit tribes, not states, there needs to be a formula fair to both parties.

The Courts clarified the rules of proper negotiations, according to the law. Schwarzenegger's attorneys argued that "the state needed the money," the Courts said, "So do tribal governments."

Gaming gives tribal governments the resource and obligation to bring tribal lands and communities into the 21st Century. And federal law supports this as the goal of tribal gaming. For people, who have only been on the path of progress for ten years, this is a very short window to catch up, and an expensive one.

It is also the most important opportunity tribes have had in 200 years. We do not want to jeopardize either public support or deprive tribal members of this chance to create a better future. Like the Rincon Band, California gaming tribes have been more than willing to pay reasonable fees directed at mitigating impacts on the environment and services to local communities.

Tribes feel an obligation to the public, which supported Class Three gaming on Indian reservations, not to the politicians, like Schwarzenegger, who rob Peter to pay Paul.

California Indian Tribes Keep Promises to Voters

When we went to the voters in 2000 to change the State Constitution to allow slot machines on Indian reservations, we promised to save taxpayer's money and use gaming revenues to get our people off dependency of taxpayer supported welfare. We have done that.

We promised to provide jobs and create taxpayers beyond our reservations. We have done that. We promised to meet our obligations as governments to improve the lifestyles and living conditions on reservations and create public services and government policies that make our reservations better neighbors.

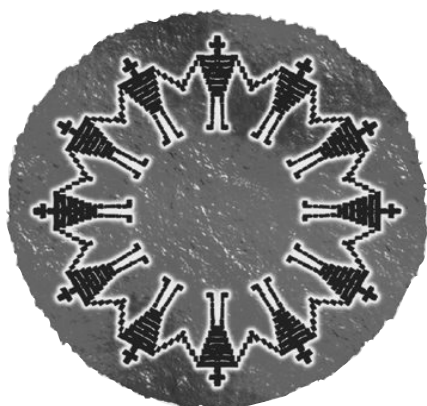
Tribes have added fire departments, police, roads, sewage, environmental and other infrastructure improvements that provide benefits both on and off our reservations—at no cost to taxpayers.

And we said, we would regulate our casinos and keep them free of crime and corruption, and we have done that. In addition to paying the state to co-regulate our casinos, we fund gaming commissions and staff them with the best expertise in the industry to protect our investment and the public.

Returning Tribal State Compact Negotiations to Legal and Fair Agreements that Benefit Tribes and Taxpayers.

Yes, the table has turned as the Rincon Band goes into negotiations with the Brown Administration— which is now under a federal court order to deal fairly with the tribe as a result of the illegal and extraordinary tax demands of the Schwarzenegger administration. These court-ordered negotiations will reinstate the legal requirements for tribal state compacts, and set a precedent for fair and balanced revenue agreements between the tribes, the state, and local governments.

For California tribal governments that rely on casino revenue to meet our responsibilities, and pay our own way there is a deep and abiding appreciation for the support California voters have given us. We are grateful for the chance to help improve the lives and safety of our neighbors, at the same time we make progress on our reservations was, is, and continues to be driving the agenda.



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