



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 9 1999

Honorable Frank Ettawageshik
Chairperson, Little Traverse Bay Bands
of Odawa Indians
P.O. Box 246
Petoskey, Michigan 49770

Dear Chairperson Ettawageshik:

On December 24, 1998, the Department received the Compact between the Little Traverse Bay Bands of Indians and the State of Michigan providing for the conduct of Tribal-Class III Gaming by the Little Traverse Bay Bands of Odawa Indians. Under Section 11 (d)(8)(C) of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(d)(8)(C), the Secretary may approve or disapprove the Compact within 45 days of its submission. If the Secretary does not approve or disapprove the Compact within 45 days, IGRA states that the compact is considered to have been approved by the Secretary, "but only to the extent the compact is consistent with the provisions of [IGRA]." The Compact takes effect when notice is published in the *Federal Register* pursuant to Section 11 (d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B).

We have declined to approve or disapprove the Little Traverse Bay Band's Compact within the 45 day period because we are particularly concerned with the legality under IGRA of the tribal payments to the State in Section 17 of the Compact. As a result, the Compact is considered to have been approved, but only to the extent it is consistent with the provisions of IGRA.

Section 17 of the Compact requires the Tribe to pay the State 8 percent of "net win" (defined as the total amounts wagered on each electronic game of chance, minus the total amount paid to players for winning wagers at such machines) derived from all Class III electronic games of chance, so long as no change in State law is enacted to permit the operation of electronic games of chance or commercial casino games by any other person (except a person operating such games in the City of Detroit pursuant to the Initiated Law of 1996) and no other person (except a federally recognized Indian tribe operating pursuant to an IGRA compact or a person operating in the City of Detroit pursuant to the Initiated Law of 1996) within the State lawfully operates electronic games of chance or commercial casino games.

The Department of the Interior has approved 196 tribal-state compacts to date. Only a few have called for tribal payments to states other than for direct expenses that the states incur in regulating gaming authorized by the compacts. To date, the Department has approved payments to the State only when the State has agreed to provide substantial exclusivity, *i.e.*, to completely prohibit non-Indian gaming from competing with Indian gaming, or when all payments cease while the State permits competition to take place. The Department has sharply limited the circumstances under which Indian tribes can make direct payments to a State. Otherwise, States effectively would be able to leverage very large payments from the tribes, in derogation of Congress' intent in 25 U.S.C. § 2710(d)(4) of IGRA not to permit States "to impose any tax, fee, charge, or other assessment upon an Indian tribe . . . to engage in Class III gaming activities." In addition, because of the Department's trust responsibility, we seek to ensure that the cost to the Tribe — in this case up to 8 percent of "net win" — is appropriate in light of the benefit conferred on the Tribe.

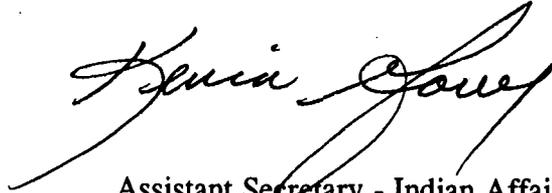
The Department questions whether Section 17 provides the tribe with any meaningful level of exclusivity. The Initiated Law of 1996, MCL 432.201 *et seq.*, has legalized non-Indian gaming in the largest market in the State of Michigan, thus allowing non-Indian gaming to compete with and draw customers from Indian gaming. When the law is implemented, it may make *de minimis* the promised exclusivity.

In addition, seven federally-recognized tribes in Michigan are each party to a federally-approved Tribal-State compact with the State of Michigan. These seven compacts were finalized only after protracted litigation with the State. *See Sault Ste Marie, et al v. Engler*, 800 F.Supp. 1484 (W.D. Mich. Mar. 26, 1992) *dismissed*, 5 F.3d 147 (1993); *see also* Stipulation for Entry of Consent Judgment, August 18, 1993; Consent judgment, August 20, 1993. The seven compacted tribes make payments to the State similar to those required under your Compact pursuant to court-ordered stipulation, not pursuant to any provision of their federally-approved compacts. In contrast to the payments required under your Compact, the seven compacted tribes in Michigan will no longer have to make any payments to the State when three commercial casinos in Detroit receive licenses. This is because the gaming "exclusivity" for which the original seven compacted tribes bargained in the Stipulation for Entry of Consent Judgment in *Sault Ste Marie, et al v. Engler, supra*, will end.

The Department believes that its decision to let the 45-day statutory deadline for approval or disapproval of the Compact expire without action is the most appropriate course of action. The 45-day statutory time frame for review of the Compact is insufficient for us to make an accurate assessment of whether the substantial payments required under Section 17 of the Compact for partial exclusivity are justified. In addition, gaming has enabled Indian tribes (including the seven Michigan tribes with existing compacts) to generate revenues to provide health, housing, education, and other governmental initiatives to their members. Tribal gaming revenues have also strengthened previously faltering tribal economies and have enabled tribal governments to address various social and economic

problems. Therefore, we believe that it is in the best interest of the Tribe, notwithstanding our concern with Section 17, to permit the Compact to become effective by operation of law, and enable the Tribe to have the opportunity to enjoy the economic benefits of Indian gaming.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin Govey".

Assistant Secretary - Indian Affairs

Identical Letter sent to: Honorable John Engler
Governor of Michigan
Lansing, Michigan 48909

cc: Minneapolis Area Office w/copy of approved compact
Michigan Agency Superintendent w/copy of approved compact
National Indian Gaming Commission w/copy of approved compact
Twin Cities Regional Solicitors Office w/copy of approved compact
Michigan US Attorney-Western District w/copy of approved compact