



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN - 4 1996
In reply, please address to:
Main Interior, Room 6456

Ms. Penny Coleman
Associate General Counsel
National Indian Gaming Commission
1441 L Street, N.W., 9th Floor
Washington, D.C. 20005

Dear Ms. Coleman:

Your office has requested a legal opinion regarding whether land held in trust by the Secretary of the Interior for the Tule River Indian Tribe in California may be used for tribal gaming under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-21 (1988). We conclude that the Tribe may not conduct gaming on its Highway 190 property because the land was taken into trust after October 17, 1988 and does not come within an exception to IGRA's prohibition against tribal gaming on trust lands acquired after that date.

Background

On December 13, 1994 the Secretary of the Interior accepted title to 39.93 acres of land in trust for the Tule River Indian Tribe of California ("Tribe"). The trust land ("Highway 190 property") is located near Lake Success in Tulare County California, approximately 10 miles from the Tribe's reservation.

The land was taken into trust based on the Tribe's representation that the property was intended for development of a destination hotel resort. Recently, the Tribe issued a notice of its intent to commence gaming upon the Highway 190 property. See February 9, 1996 Letter from Sacramento Area Director of the Bureau of Indian Affairs to Chairman Duane Garfield, Sr. (on file in the Solicitor's Office).

Section 20 of IGRA

Section 20 of IGRA, 25 U.S.C. § 2719, prohibits gaming on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless the lands satisfy one of several exceptions. The prohibition will not apply if:

- (1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

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(2) the Indian tribe has no reservation on October 17, 1988, and . . .

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

See 25 U.S.C. § 2719(a). The Act additionally provides that the prohibition against off-reservation Indian gaming will not apply when the Secretary, after consultation with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination. *See* 25 U.S.C. § 2719(b)(1)(A).

The Bureau of Indian Affairs has informed us that the Highway 190 property is off-reservation trust land.¹ As such, the land was not located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988. Our office has previously determined that "contiguous" as used in IGRA means land that is "adjacent to and touching" a tribe's reservation. In this instance, the Tribe's Highway 190 property is not adjacent to and does not touch the Tribe's reservation. Thus, the exception at 25 U.S.C. § 2719(a)(1) is inapplicable here. We note that the Tule River reservation was in existence on October 17, 1988 and thus the exception at § 2719(a)(2)(B) is likewise inapplicable to this property.

Under 25 U.S.C. § 2719(b), non-contiguous, off-reservation trust land may be used for gaming if the Secretary has determined that a gaming establishment on the newly acquired lands is in the best interest of the Indian tribe and its members and not detrimental to the surrounding communities but only if the Governor of the State concurs in the determination. There is no indication that the Tribe has sought such a determination from the Secretary. Additionally, the lands were not taken into trust as part of a settlement of a land claim, the initial reservation of an Indian tribe acknowledged by the Secretary or the restoration of lands for an Indian tribe that is restored to Federal recognition. Hence, the exceptions at 25 U.S.C. § 2719(b)(1)(B)(i-iii) are not applicable here.

It is our opinion that Section 20 goes to the available uses of land taken into trust after October 17, 1988. Thus, when the Tule River Indian Tribe requested the Secretary to take the Highway 190 property into trust for economic development, the Secretary acted within his discretion and took title to the property in trust for the benefit of the Tribe pursuant to 25 C.F.R. Part 151. But, because the land was acquired in trust after the October 1988 deadline imposed by IGRA,

¹ The Tule Indian Reservation was originally set apart by executive order in 1873 for the use of scattered bands of Indians in California, including the Tule River, King's River, Owen's River, Manche Cajon and others. By successive executive orders in 1878 and 1928, the reservation was diminished. *See* 45 Stat. 600.

the land cannot be used for gaming unless the Secretary makes his determination that such gaming is in the best interest of the Tribe and its members and not detrimental to the surrounding communities and the Governor of the State of California concurs with this determination. If the Tribe commences gaming on this land, this will constitute a violation of IGRA and the Tribe may be subject to enforcement action from the National Indian Gaming Commission and the United States Attorney's office.

Conclusion

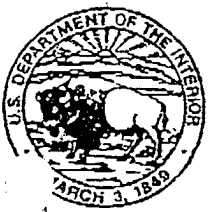
In our opinion, the Tribe's intention to conduct gaming on trust lands acquired after October 17, 1988 triggers Section 20. Absent the applicability of one of the exceptions, gaming on the Highway 190 property is contrary to the Act. As indicated above, none of the exceptions apply. Thus, the Tule River Tribe may not conduct gaming on the Highway 190 property at this time.

If you have any further questions, please contact Troy Woodward at 208-6526.

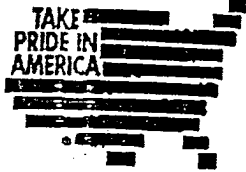
Sincerely,



Robert T. Anderson
Associate Solicitor
Division of Indian Affairs



United States Department of the Interior



BUREAU OF INDIAN AFFAIRS

Sacramento Area Office

2800 Cottage Way

Sacramento, California 95825

IN REPLY REFER TO:

VIA FACSIMILE AND REGULAR MAIL

FEB 09 1996

Mr. Duane Garfield, Sr., Chairman
Tule River Reservation
P. O. Box 589
Porterville, California 93258

Dear Mr. Garfield:

It has been brought to our attention that the Tribe has issued notice of its intent to commence gaming upon the Tribe's "Highway 190" off-reservation property which was accepted into trust in December of 1994.

Our case record for this acquisition reflects that the subject property, consisting of 39.93 acres, was vacant grazing land at the time of the Tribe's application. The property is located near Lake Success in Tulare County approximately 12 miles east of the town of Porterville. The land acquisition application stated the intended purpose was to establish a destination resort hotel which was to include a restaurant, speciality shops, arts and crafts center, conference center and related banquet facilities, tennis courts, walking areas, and park/picnic areas.

Included in the application was a Memorandum of Understanding between the Tule River Tribe and Tulare County wherein the parties agreed that the property would be developed for destination hotel resort purposes and as otherwise consistent with the County's Foothill Growth Management Plan. The County's plan was adopted by the Tribe (Tribal Resolution No. 38-93). That property was accepted into trust for the Tule River Tribe pursuant to Section 5 of the Indian Reorganization Act (25 U.S.C. §465) and implementing regulations in 25 CFR Part 151. The deed was formally accepted on December 13, 1994 by the undersigned and recorded in Tulare County on December 23, 1994.

Section 20 of the Indian Gaming Regulatory Act (IGRA) of 1988 (25 U.S.C. §2719) specifically prohibits the conduct of gaming on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988 unless --

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988.

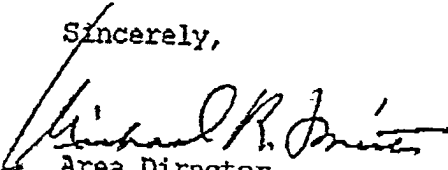
The "Highway 190" property is neither on nor contiguous to the Tule River Reservation.

In our view, the only exception to the prohibition on the conduct of gaming on newly acquired lands contained within Section 20 that might be applicable to the Tule River Tribe would be for the Secretary to determine, after consultation with

the Tribe and appropriate State and local officials, that a gaming establishment on the newly acquired lands would be in the best interest of the Tribe and its members and such establishment would not be detrimental to the surrounding community, and the Governor of California concurs in that determination. A copy of Section 20 of the IGRA is enclosed for your ready reference.

Based on the foregoing, it is our position that commencement of gaming on the "Highway 190" property would, at this time, constitute a violation of Section 20 of the IGRA. Accordingly, by copy of this letter, we are referring this matter to the National Indian Gaming Commission and the U.S. Attorney's office for appropriate action.

Sincerely,


Acting Area Director

Enclosure

cc: Superintendent, Central California Agency
Deputy Commissioner, BIA
Chairman, National Indian Gaming Commission
Director, Indian Gaming Mgmt., BIA
U.S. Dept. of Justice, Eastern District,
Attn: Doug Hendricks, Asst. U.S. Attorney, Sacramento
Deputy Regional Solicitor, Ofc. of the Solicitor, Sacramento

HISTORICAL AND STATUTORY NOTES

Legislative History News, p. 3071. See, also, Pub.L. 102-238, 1991 U.S. Code Cong. and Adm. News, p. 100-497, see 1988 U.S. Code Cong. and Adm.

§ 2719. Gaming on lands acquired after October 17, 1988

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and—

(A) such lands are located in Oklahoma and—

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary; or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) of this section will not apply when—

(A) the Secretary, after consultation with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of—

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) of this section shall not apply to—

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Authority of Secretary not affected

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Application of Internal Revenue Code of 1936

(1) The provisions of the Internal Revenue Code of 1936 (including sections 1441, 3402(q), 6041, and 60501, and chapter 85 of such Code) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(9) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1983, unless such other provision of law specifically cites this subsection.

(Pub.L. 100-497, § 20, Oct. 17, 1983, 102 Stat. 2486.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Internal Revenue Code of 1936, referred to in subsection (d), is classified generally to Title 26.

Legislative History

For legislative history and purpose of Pub.L. 100-497, see 1983 U.S. Code and Cong. and Adm. News, p. 3071.

LIBRARY REFERENCES

Indians § 9 to 22.

WESTLAW Topic No. 209.

C.I.S. Indians §§ 10 to 63, 90.

§ 2720. Dissemination of Information

Consistent with the requirements of this chapter, sections 1301, 1302, 1303 and 1304 of Title 18 shall not apply to any gaming conducted by an Indian tribe pursuant to this chapter.

(Pub.L. 100-497, § 21, Oct. 17, 1983, 102 Stat. 2486.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 100-497, see 1983 U.S. Code Cong. and Adm. News, p. 3071.

LIBRARY REFERENCES

Indians § 32.5, 32.10.

WESTLAW Topic No. 209.

C.I.S. Indians §§ 11, 20 to 25, 72 to 75.

§ 2721. Severability

In the event that any section or provision of this chapter, or amendment, made by this chapter, is held invalid, it is the intent of Congress that the remaining sections or provisions of this chapter, and amendments made by this chapter, shall continue in full force and effect.

(Pub.L. 100-497, § 22, Oct. 17, 1983, 102 Stat. 2486.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 100-497, see 1983 U.S. Code Cong. and Adm. News, p. 3071.

Statutes
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