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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 United States for the Seminole Tribe of Florida 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 conduct gaming on the property known as the "Palm Beach Farms Plat No. 3" (hereafter "Palm Beach Farms land") because the land is "Indian land[]" under IGRA.

Background

The Director of the Eastern Area Office of the Bureau of Indian Affairs accepted title to 4.886 acres of land in trust for the Seminole Tribe of Florida ("Tribe") on behalf of the United States on July 25, 1985. The trust land, the Palm Beach Farms, is located in the City of Coconut Creek, Broward County Florida. The IGRA provides that any Class II or Class III gaming pursuant to IGRA must occur on "Indian lands." Thus, we must determine whether the property constitutes "Indian lands" within the meaning of the IGRA.[1]

Indian Lands Pursuant to IGRA

IGRA defines "Indian lands" as:

> all lands within the limits of any Indian reservation; and
>
> any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or

[1] Since the land was acquired in trust in 1985, the provisions of Section 20 of IGRA, 25 U.S.C. § 2719, which prohibit gaming on lands acquired after October 17, 1988, are inapplicable.

individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4)(A) and (B).

The land in question is not located within the exterior boundaries of the Tribe's reservation, but the United States accepted the land in trust for the Tribe in 1985, as already noted. Thus, the land satisfies the first part of the "Indian lands" definition in that it is "held in trust by the United States for the benefit of any Indian tribe." Id.

The definition of "Indian lands" also requires, however, that the Seminole Tribe exercise "governmental power" over the parcel. Although "governmental power" is not defined in IGRA, the Act plainly requires something more than the mere possession by a tribe. Every Indian tribe retains "attributes of sovereignty over both their members and their territory." California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987)(quoting United States v. Mazurie, 419 U.S. 544, 557 (1975)). Thus, it would not have been necessary for Congress to add "and over which an Indian tribe exercises governmental power" if it had intended to describe and include in the definition of "Indian lands" all lands owned by a tribe. The quoted language relating to governmental powers would have been mere surplusage. To give meaning to every word in a statute, as we must, we conclude the Congress intended some exercise of governmental powers or immunities beyond mere possession of an interest in the land.

The facts here show that the tribe exercises governmental power over the land. The Constitution of the Seminole Tribe, as approved by the Secretary, defines the extent of the Tribe's jurisdictional territory as including lands within the Hollywood, Big Cypress and Brighton Reservations; lands held under Executive Order No. 1379, dated June 28, 1911; and "such other lands as may hereafter be acquired for the use and benefit of the Seminole Tribe of Florida," which would include these lands. Amendment XXI, Seminole Constitution.

Besides the territorial jurisdiction asserted in the Tribe's Constitution, several examples of significant acts undertaken by the Tribe show how the Tribe exercises its governmental powers over the land. In 1987, the Tribe entered a water rights compact with the State of Florida and the South Florida Water Management District. Congress approved the compact in the Florida Indian (Seminole) Land Claims Settlement Act of 1987, 25 U.S.C. § 1772e. The compact provisions apply to all trust lands held by the United States for the Seminole Tribe as of the date of the compact, including the Palm Beach Farms trust land.

The Seminole Tribe enacted a tribal water code that set up the Seminole Water Commission. The Commission regulates water use within the Tribe's reservations and within "any other lands . . . acquired by or for the Tribe." See Seminole Water Code Section 3.3 (on file with our office). The Seminole Water Commission further approved filling in part of the lake presently on the trust parcel. This action was approved by the South Florida Water

Management District in December of 1996, through approval of an amendment to the Tribe's work plan under the compact.

Besides the above, the Tribe has successfully applied to the Corps of Engineers for authority to fill in a portion of the lake on the trust parcel pursuant to their Nationwide Permit Number 26. The Tribe has consented to grant a right-of-way through the trust parcel by 25 C.F.R. § 169.3(a) and has, by tribal resolution, permitted the City of Coconut Creek to install water, sewer, drainage and other improvements on the land. This illustrates the City's recognition of the Tribe's governmental authority over the land. See Tribal Resolution C-112-88 (Mar. 18, 1988)(on file with our office).

The Seminole Tribe currently operates a tribally-owned smoke shop (a cigarette store) on the land and, according to the tribal realty officer, has done so for the past 10 years. As a tribal business operated on trust land, the proceeds from the Tribe's business are free from state tax. The very nature of the tribal activity conducted on the land invokes the Tribe's sovereign immunity which is an exercise of governmental power. Additionally, the Tribe retains the jurisdictional authority to regulate activity conducted on the land and to exclude others from the land.

As the above examples show, there is ample evidence that the Seminole Tribe exercises governmental power over the Palm Beach Farms land. The trust land at issue satisfies the definition of "Indian lands" under the IGRA, and may be used for gaming under the Act.

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

Sincerely,

David C. Etheridge

David C. Etheridge
Acting Associate Solicitor
Division of Indian Affairs

cc:
Jerry C. Straus
Hobbs, Straus, Dean and Walker
1819 H Street, N.W., Suite 800
Washington, D.C. 20006