National Indian Gaming Commission

IN RE CLASS II GAMING ORDINANCE OF THE COMANCHE TRIBE OF OKLAHOMA

DECISION OF THE COMMISSION

INTRODUCTION

This is an appeal by the Comanche Tribe of Oklahoma (Comanche Tribe or Appellant) from the Chairman of the National Indian Gaming Commission's (NIGC or Commission) February 5, 2001, disapproval of an amendment to the Comanche Tribal Gaming Ordinance, enacted by Tribal Resolution 102-00 (Ordinance Amendment). For the reasons set forth below, the Chairman's decision to disapprove the Ordinance Amendment is affirmed.

BACKGROUND

On April 1, 1996, the Chairman of the NIGC approved Resolution No. 32-96, Comanche Nation Gaming Ordinance. Section 4(b) of that ordinance provides that "the Nation shall be authorized to conduct all forms of Class II gaming within the Nation's jurisdiction . . . ."

On December 18, 2000, the NIGC received Comanche Tribe Resolution No. 102-00, dated December 2, 2000, which amended Section 2(j) of the Comanche Tribe of Oklahoma's Tribal Gaming Ordinance. That amendment provides in its entirety:

> Existing Section 2(j) to be replaced with the following: Section 2(j) "Jurisdiction" means those areas over which the Comanche Nation has jurisdiction, including but not limited to, (1) all Comanche Nation lands, (2) dependent Indian communities of the Comanche, and (3) all lands originally allotted to the Comanche Nation or its members that are held in trust by the United States, regardless of the tribal affiliation of the owner (whether an individual or tribe), unless the Comanche Nation has expressly authorized in writing the relinquishment of such land from its jurisdiction. The term "jurisdiction", as used herein, does not include jointly-held lands of the Kiowa, Comanche and Apache Indian Nations.

The Appellant also submitted Ordinance 103-00 to amend Section 15(a) of the Comanche Tribe of Oklahoma's Tribal Gaming Ordinance by providing in its entirety:

> Existing Section 15 to be amended to add at the end of subsection (a) "of the Comanche Nation Games." Thereafter Section 15(a) should read as follows: It shall be a violation of this Ordinance for any person to: (a) Conduct or participate in any Class II or Class III gaming operation within Comanche Nation jurisdiction other than at the gaming facilities of the Comanche Nation Games.

The Chairman approved Ordinance Resolution 103-00 on February 5, 2001.

The Chairman disapproved Ordinance Resolution 102-00 on February 5, 2001, because subsection 2(j)(3) purported to give jurisdiction to the Comanche Tribe to regulate gaming on land having status comparable to that of an acquisition of the Fort Sill Apache Tribe. (Ordinance Disapproval Letter, February 5, 2001). The Comanche Tribe appealed the disapproval to the Commission on March 7, 2001.

DISCUSSION

Tribal ordinances or resolutions concerning the conduct or regulation of class II gaming are reviewed by the Chairman in accordance with 25 U.S.C. § 2710(b)(2). Amendments to a tribe's gaming ordinance are submitted for approval by the Chairman in accordance with 25 C.F.R. § 522.3. A tribe may appeal a determination by the NIGC Chairman disapproving a gaming ordinance, resolution, or amendment within 30 days after the Chairman serves notice of his determination of disapproval. See 25 C.F.R. Part 524. The appeal by the Comanche Tribe in this matter was filed in a timely manner.

From the Appellant's perspective, the heart of the matter concerns the Appellant's ability to exercise governmental power over all lands originally allotted to the Tribe or its members. The Appellant argues in its appeal that the BIA's decision to acquire the Kiowa member land in trust for the Fort Sill Apache Tribe was in error and that the Appellant retains jurisdiction over this land. The Appellant further argues that the Commission should find that the Secretary of the Interior's decision to take land into trust for the benefit of the Fort Sill Apache Tribe was erroneous. Appeal of the Comanche Tribe of Oklahoma, at page 24.

In addressing tribal gaming ordinances and amendments to such ordinances, the NIGC endeavors to interpret and apply the terms of IGRA and its implementing regulations. By interpreting and applying the "Indian lands" definition, the Commission may determine whether gaming may be conducted or regulated by a tribe on specific parcels of land. (*See* Sac and Fox Nation of Missouri, et. al. v. Norton, et. al., 240 F.3d 1250, 1265 (10th Cir. 2001).

This appeal is properly resolved by focusing on whether or not the Appellant's amendment to its tribal gaming ordinance is consistent with IGRA. The Act expressly limits gaming to *Indian lands over which the Tribe has jurisdiction* (emphasis added).[1] *See* 25 U.S.C. § 2710(b)(1) ("An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction. . . "); 25 U.S.C.§ 2710(2) ("The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction...."); and 25 U.S.C. §2713(d) ("Nothing in this chapter precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is not inconsistent with this chapter or with any rules or regulations adopted by the Commission").

Having reviewed the record before the Chairman, as well as the Chairman's decision, the Commission declines to reverse the Chairman's disapproval of the ordinance amendment. The primary basis for our decision lies within the third clause of the ordinance's definition of the term "jurisdiction." This clause, which is set forth above, appears to be intended as an assertion of tribal governmental authority over land now designated as being within the jurisdiction of, and held in trust for, another tribe. While it is not necessarily inconceivable that two tribes could lawfully possess jurisdiction over the same lands, it appears that sharing jurisdiction is not the intention of the Appellant's ordinance. Indeed, Section 15(a) of the Appellant's ordinance provides exclusive jurisdiction to the Appellant and therefore unlawfully attempts to oust any other tribe of jurisdiction over "lands originally allotted to the Comanche Nation or its members that are held in trust by the United States, regardless of the tribal affiliation of the owner (whether an individual or tribe)."

The assertions within the Appellant's amended ordinance are inconsistent with IGRA because they could be construed to deny another tribe jurisdiction over its own trust lands for gaming purposes. Although the Appellant is entitled to disagree with the Secretary's decision to take land into trust for another tribe, the Commission is reluctant, in this context, to ratify Appellant's broad assertions of jurisdiction and risk undermining the Secretary's decision to take land into trust for another tribe.

Indeed, whatever the merits of the Appellant's position on the Secretary's actions in taking land into trust, the NIGC declines the invitation to re-evaluate a decision of the Secretary as to matter that is clearly within the Secretary's authority. The Commission believes it prudent to allow the Secretary's decision to stand or fall on its own merits through direct review of such actions. Under the circumstances presented here, the Commission will not make itself a forum for a collateral attack on the Secretary's

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[1] The IGRA defines "Indian lands" as:

(A) all lands within the limits of any Indian reservation; and
(B) 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 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).

decision. Such an approach would merely inject further confusion into an already complex issue.

By amending its gaming ordinance to include a controversial assertion of jurisdiction, the Appellant seeks to obtain a ruling that the NIGC simply need not reach. The Appellant has unnecessarily sought to entangle the gaming ordinance amendment review process with matters clearly not necessary to determine the adequacy of the tribal gaming regulation.

DECISION

The Amendment to Section 2(j) of the Comanche Nation Gaming Ordinance, as adopted by Comanche Tribe Resolution 102-00, contains language inconsistent with the definition of "Indian lands" and with other provisions of the Indian Gaming Regulatory Act in that the Amendment purports to allow the Appellant to conduct and regulate gaming on lands over which it would not have jurisdiction and over which it would not exercise governmental control.

We affirm the Chairman's disapproval of the Ordinance Amendment.

Dated: June 18, 2001

Montie Deer by J.J.W.
Montie R. Deer
Chairman

Elizabeth D. Homer
Vice-Chairman

Teresa E. Poust
Commissioner