NATIONAL
INDIAN
GAMING
COMMISSION

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JAN 23 1996

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RE: Red Cliff Band of Lake Superior Chippewas, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Sokaogon Chippewa Community and Galaxy Gaming and Racing Limited Partnership Appeal of the Chairman's Disapproval to the Management Contract Between the Parties.

INTRODUCTION

This matter is before the National Indian Gaming Commission (Commission) on Appeal of the Chairman's decision to disapprove the Management Contract (Contract) among the Red Cliff Band of Lake Superior Chippewas, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Sokaogon Chippewa Community (collectively referred to as the Bands) and Galaxy Gaming and Racing Limited Partnership dated February 23, 1994. The parties submitted the Contract to the Commission on June 30, 1994, and the Chairman disapproved it on December 6, 1995. The parties filed a timely appeal on January 3, 1996. The Commission has thirty (30) days to render a decision on the appeal from the date of the appeal. 25 C.F.R. § 539.

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The Contract provides for the development of a gaming operation on a tract of land known as the Hudson Dog Track. Because this tract of land does not qualify as "Indian lands," the Bands submitted an application to Minneapolis Area Office of the Bureau of Indian Affairs to take that parcel of land into trust on November 15, 1994. By letter dated July 14, 1995, Michael Anderson, on behalf of the Secretary of the Interior (Secretary), declined to take that land into trust. The Bands have filed a suit in the Federal District Court for the Western District of Wisconsin challenging that decision, Sokaogon Chippewa Community (Mole Lake Band of Lake Superior Chippewa), et al. v. Bruce C. Babbitt, et al., Case No. 95-C-0659-C. The Chairman disapproved the Contract because the Secretary refused to take the land into trust.

OPINION

The Indian Gaming Regulatory Act (IGRA) authorizes gaming only on Indian lands. 25 U.S.C.A. § 2710 (1988). IGRA defines Indian lands as follows:

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

Because the Secretary did not take the land in question into trust, it does not qualify as Indian lands for the purposes of the IGRA. The Chairman cannot approve a contract for gaming on a parcel of land that does not meet the requirements of the IGRA. 25 U.S.C.A. § 2711.

Because the parties have sued the Secretary to overturn his decision and they are confident that they will prevail, they argue that the Commission should overturn the Chairman's decision. They request that the Commission remand the matter back to the Chairman with instructions to hold approval of the Contract in abeyance pending a final decision in the suit.

The Chairman did not err in disapproving the Contract. The law gave him no other alternative. While we are sympathetic to the parties situation, it would be imprudent for us to reverse the Chairman's decision and order him to hold his decision in abeyance while the court case is proceeding. As the Chairman stated in his letter, should the parties prevail in their suit

they may resubmit the Contract to the Chairman for his approval. The Contract will be given the highest priority at that time.

Therefore, for the foregoing reasons, the Chairman's decision is AFFIRMED.

Harold A. Monteau, Chairman

Tom Foley, Commissioner

Phil Hogen, Commissioner

cc: S. Todd Farris, Esq.