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OFFICE OF GOVERNOR



April 4, 2008

Hon. Carl J. Artman
Assistant Secretary of Indian Affairs
Office of Indian Gaming
United States Department of the Interior
1849 C Street, NW, MS 3657-MIB
Washington, D.C. 20240

Re: Proposed Regulations: 25 C.F.R. Part 293 -- Class III Tribal State Gaming Compact Process

Dear Mr. Artman:

On behalf of the Pueblo of Santa Clara, I would like to respond to your request for comments on the proposed regulations regarding the process for submitting Class III tribal-state Compacts or proposed amendments to existing compacts to the Secretary for review and approval. Although the Pueblo of Santa Clara has an existing compact in place, and recently negotiated with the State of New Mexico a series of amendments that were approved by the Secretary, it is entirely possible that the compact may be amended in the future, and because there is at least one issue of some concern to us raised by these regulations, we do wish to have our comments made part of your record.

We would note first that for the most part, the regulations merely repeat the language of the statute, and thus add very little to the procedure that is already in place. One term that is new in these regulations, however, is set forth in §293.6(c), which requires that there be submitted with any new compact or compact amendment a "legal analysis documenting that the scope of gaming that has been agreed to in the compact or compact amendment is located in a State that permits such gaming for any purpose by any person, organization, or entity." The regulation does not say who is to produce this analysis, or what purpose it is to serve, but regardless, considering what a significant and controversial issue it touches on, its inclusion as a requirement for compact approval is cause for grave concern.

As you may be aware, the issue of whether particular types of class III gaming were “permitted” within any state was an issue that was extensively and bitterly litigated in the early years of the Indian Gaming Regulatory Act. See, e.g., *Northern Arapaho Tribe vs. Wyoming*, 389 F.3d 1308 (10th Cir. 2004); *Artichoke Joe’s California Grand Casino vs. Norton*, 353 F.3d 712 (9th Cir. 2003); *Rumsey Rancheria of Wintun Indians vs. Wilson*, 64 F.3d 1250 (9th Cir. 1995); *Yavapai-Prescott Indian Tribe vs. Arizona*, 796 F. Supp. 1292 (D. Ariz. 1992); *Lac Du Flambeau Band of Lake Superior Chippewa Indians vs. Wisconsin*, 770 F. Supp. 480 (W.D. Wisc. 1991); *Mashantucket Pequot Tribe vs. Connecticut*, 913 F.2d 1024 (2nd Cir. 1990). Each of those cases took a different view of the meaning of the “permitted for any purpose by any person, organization, or entity” language of IGRA, some of them diverging dramatically, and the issue has never been resolved by the United States Supreme Court. There are some states in which tribes are the only entities allowed to engage in any form of class III gaming. In other states, some forms of class III gaming are permitted, but tribes are entitled under their compacts to engage in all forms of class III gaming. In other states, tribes are limited by their compacts to only those precise types of games that are permitted within the state. Other states limit tribes to only games that are specifically described in the compacts, even though other types of Class III gaming is allowed in the state. It is our view that given the inconclusiveness of the litigation on this subject, requiring that a “legal analysis” of these issues now be presented to the Secretary whenever a compact has to be amended, even though the matter has been effectively resolved as between each state and the tribes within the state, would unnecessarily open old wounds and possibly unsettle issues that have been resolved at least as a practical matter, if not a legal one, for some time. Moreover, given the variety of different judicial interpretations of the language, we wonder what interpretation the Secretary might bring to the language in reviewing the various “analyses.”

It seems particularly inappropriate to raise these issues even when the Secretary is presented only with an amendment to a compact, whether or not the amendment has anything to do with the scope of gaming permitted in the compact. We believe that adding this requirement to what must be submitted to the Secretary, thus, can only be a source of controversy (and, perhaps, more litigation) and would distract the parties and the Secretary from the IGRA-mandated function of determining that the compact has been properly entered into by the tribe and the state, and is not in violation of any federal law. We would therefore urge that this provision of the proposed regulations be deleted, in its entirety.

We would add only one more thought. IGRA provides, and the proposed regulations reiterate, that if the Secretary neither approves nor disapproves the compact within the 45-day period allowed by the statute, the compact is considered to have gone into effect, “but only to the extent the compact is consistent with IGRA.” Generally, the Secretary has not allowed the 45-day period to run by inadvertence, but rather has done so in those cases where the Secretary feels that the compact might not technically be approvable, but for various reasons concludes that it would be unreasonable to disapprove it. We believe that it would be appropriate to provide by regulation that in that event, the Secretary will by letter to the parties advise the parties of the specific provisions of the compact that the Secretary believes may be in violation of IGRA or other federal law, and that thus may not have gone into effect under the terms of the statute. This provision has been a source of considerable consternation for those of us who have operated

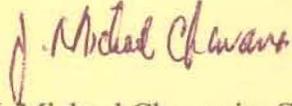
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under compacts that were approved by operation of law in this manner, and having guidance from the Secretary's office on this point would be of great value.

We hope that these comments are helpful in your process, and we look forward to an opportunity to consult with you on them further.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "J. Michael Chavarria". The signature is written in a cursive style with a large initial "J".

J. Michael Chavarria, Governor

cc: Richard W. Hughes, Esq.
Calvin Tafoya, CEO/President, SCDC