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# The MICHIGAN GAMING Newsletter



## SUPREME COURT ISSUES OPINION IN GUN LAKE CASE

On Monday, June 18, 2012, the United States Supreme Court issued its opinion in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchack, et al.* (Slip Opinion No. 11-246), holding that the respondent, Mr. David Patchack, had established standing and could proceed on the merits. The issue was decided on an 8-1 vote, with Justice Kagan authoring the lead opinion and Justice Sotomayor providing a dissenting opinion.

The case, which has now been remanded to the U.S. District Court for the District of Columbia, will now proceed to determine whether the Secretary of the Interior properly took land into trust for the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians ("Tribe") for the Gun Lake Casino.

On June 18, 2012, the Tribe issued a statement regarding the Supreme Court's decision. Tribal Chairman D.K. Sprague stated that "[w]e are ready to continue that fight in federal court and we are confident the facts will clearly prove once and for all that Patchak's claims have absolutely no merit. The Tribe would prefer to devote its resources to the economic development of the area; however, since Patchak's lawsuit dictates otherwise, the Tribe will do what is necessary to prevail." Chairman Sprague also noted that the decision would have no effect on Gun Lake Casino operations.

The issued opinion considered issues of sovereign immunity and standing during the land-in-trust process used by the Secretary of the Interior to take land into trust by the federal government on behalf of a Native American tribe. The land-in-trust process is an important aspect of Native American gaming law that, in addition to other rights, allows a tribe to conduct Class III gaming activities on the land after receiving certain state and federal approvals.

Specifically, the Supreme Court considered arguments regarding whether a private individual is able to bring suit against the federal government resulting from a gaming operation conducted on trust lands. Circuit courts

have been split on the issue, with the Seventh, Ninth, and Eleventh Circuits stating that the federal government is immune to all such suits under the Quiet Title Act. Conversely, the D.C. Circuit has held that the government is immune only when a plaintiff claims title to the land.

It is important to note that the Court did not consider the merits of the case and limited its holding to issues of standing. As such, the Court's holding did not resolve the substance of the alleged claims but allows Patchak to move forward with his lawsuit at the District Court level.

## **SWEEPSTAKES INTERNET CAFÉ UPDATE**

On Monday, June 18, 2012, Genesee County Circuit Court Judge Judith Fullerton denied a preliminary injunction request by the owners of the Flint Business Center that sought to allow for the continued operation of its internet sweepstakes cafe.

The denial comes after Michigan Attorney General Bill Schutte's division of Alcohol and Gambling Enforcement issued a new round of cease-and-desist letters in regards to nine Internet sweepstakes cafes last Friday.

The Flint Business Center, one of the cafes that received a cease-and-desist letter earlier this year, filed its request for preliminary injunction in the Genesee County Circuit Court to prevent the state from exercising the enforcement measures outlined in the cease-and-desist letters. According to the request for preliminary injunction, the Flint Business Center argued that the games do not require consideration because sweepstakes entries are offered for free with purchase or upon request.

## **MICHIGAN BALLOT INITIATIVE UPDATE**

As of Wednesday, June 20, 2012, Citizens for More Michigan Jobs ("CMMJ") stated that the group will have enough signatures to place its expanded gaming ballot initiative on the

November ballot. CMMJ has put forth a ballot initiative for a constitutional amendment that, if passed, would authorize eight more commercial casinos to be operated within the state.

In an interview with *MLive*, CMMJ Spokeswoman Emily Gerkin Palsrok commented on the signature gathering process, stating, "I don't know where we're at, but I know we're well over what we needed." The group has stated the constitutional amendment would increase local and state tax revenues, provide jobs in the various targeted local communities, as well as provide an increase in funding to state education and public service providers.

The current proposal is calling for eight casinos to be built in downtown Detroit and Grand Rapids, Romulus, Pontiac, Dewitt Township, Birch Run, Clam Lake Township, and Clinton Township. In addition, the amendment would change the wagering tax rate and distribution process.

Under current law, the three existing commercial casinos in Detroit are subject to a 19% wagering tax, with 8.1% of the tax allocated to the state and 10.9% of the tax allocated to the City of Detroit. If passed, the proposed amendment would raise the tax to 23% on gross receipts which would be allocated as follows: 30% to K-12 schools throughout the state, 20% to municipal governments for fire and police services, 20% to the local units of government where the casino is located, 20% to the county in which the casino is located, 5% to the state for the purposes of road repair and construction, and 5% to the state for gambling addiction prevention services. Casinos located in the City of Detroit, including the three existing commercial casinos, would also be subject to the 23% tax rate but would require wagering taxes to be distributed as follows: 60% to police and fire services in the city, 20% to K-12 schools throughout the state, and 20% to the state to fund road repairs and construction

Protect MI Vote, a group that is opposed to the ballot initiative, has argued that the proposal would eliminate local communities' right to vote on the casinos and has begun running a targeted campaign against the ballot initiative. FireKeepers Casino has also announced its opposition, holding

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an informational meeting on June 7, 2012 that detailed its arguments against the measure, stating that the amendment language could allow for unsuitable parties to enter the industry and that it would circumvent local communities right to vote on expanded gaming efforts.

Along with CMMJ, a separate ballot initiative is being promoted by the group Michigan is Yours that would authorize seven additional commercial casinos across the state. Michigan is Yours has attempted to place similar initiatives on the ballot in past years, but failed to gather enough signatures in each attempt. The Michigan is Yours ballot initiative would authorize commercial casinos in Lansing, Detroit, Grand Rapids, Romulus, Benton Harbor, Saginaw, and Mount Clemens but would not change the wagering tax structure.

## **SUMMER COMPLIANCE SERIES: POLITICAL CONTRIBUTION RESTRICTIONS**

*In addition to its traditional coverage of developments in the state's gaming industry, The Michigan Gaming Newsletter is proud to announce its first annual Summer Compliance Series. From June until the end of August, The Michigan Gaming Newsletter will be publishing a regular column in order to provide readers with a basic understanding of Michigan gaming regulatory structures and considerations. The following is a general discussion of the state's compliance requirements and should not be considered legal advice.*

This November, in addition to the presidential and congressional elections, Michigan voters will have the opportunity to vote on a number of state and local political offices, including state representatives, university trustees, state judges, and various local positions. As political groups are increasing fund raising activities in advance of the election, it is important for those holding a license issued by the Michigan Gaming Control Board ("MGCB") to review and observe the state's political contribution restrictions.

Though the state has maintained restrictions on

political donations since the inception of the Michigan Gaming Control and Revenue Act ("Act"), these provisions have evolved over time.

### *History*

As originally drafted, the political contribution restrictions in Section 7b of the Act contained broad language that applied the restrictions on political donations to state, state legislative, and local elective offices to all licensees, key persons, interest holders in licensees, including the spouses and close family members of these individuals. In addition, the Act prohibited contributions made for a period of one year prior to an individual applying for any MGCB operator or supplier licensee.

However, on December 17, 1998, then Michigan attorney general Frank Kelley issued Attorney General Opinion No. 7002, which concluded that certain sections of the original political contributions restrictions were unconstitutional. Specifically, the order opined that the restrictions placed on political contributions made by spouses and close family members, as well as the restrictions on contributions made one-year prior to applying for a license as applied to supplier licensees were unconstitutional (the opinion, however, concluded the one-year retroactive restrictions as applied to casino operator licensees constitutional). In addition to the 1998 Opinion, two additional Attorney General Opinions (#7086 August 10, 2001 and #7099 January 9, 2002) have been issued which further clarify the application of Section 7b.

### *Current Restrictions*

The current law prohibits casino and supplier licensees from making political contributions to any state or local political candidates or any "holder of any state, legislative, or local elective office." MCL §432.207b(a)(ii). In addition, the restrictions apply to those political action, candidate, or independent committees that donate to candidates for state or local offices.

Therefore, as a general rule, if a donation has the possibility of funding a state or local candidate, even if it is through a political action or similar committee, then the Act prohibits the contribution.

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These restrictions, however, do not apply to candidates for federal elective office. Notably, the restrictions also do not apply to ballot question committees.

The parties covered by Section 7b of the Act are those entities or individuals who hold a casino or supplier license issued by the MGCB. This includes individuals holding a 1% or greater ownership interest in a licensee, officers or managerial employees of a licensee, and officers or managerial employees of entities that hold a 1% or greater interest in a casino or supplier licensee.

Political contribution restrictions apply as long as the casino or supplier is licensed by the MGCB and for a period of three years following the expiration or termination of the license. In addition, the restrictions apply to any contributions made one-year prior to an individual or entity that is applying for a casino operator license.

Violations of Section 7b can result in a felony punishable by imprisonment for not more than ten years or a fine not more than \$100,000 or both and/or immediate licensing action by the MGCB, including revocation of a license (Section 18(1) (f)). The MGCB has and continues to strictly enforce these provisions, so it is important for those covered by Section 7b to closely monitor any political contributions to ensure that they are in compliance with section 7b of the Act.

#### *Casino Interest Registration Act*

In connection with the Act, the Michigan legislature passed the Casino Interest Registration Act (“CIRA”) in order to assist the state attorney general, MGCB, and other interested parties in monitoring compliance with the Act’s political contribution restrictions. In accordance with CIRA, all entities or individuals who hold a 1% or greater interest in a casino operator licensee and have not been otherwise exempted from compliance with CIRA must complete a short, one-page registration form and submit the same to the Michigan Bureau of Elections.

The Michigan Bureau of Elections maintains a list of all registrants under CIRA and publishes this list bi-annually. The list contains the names of those entities or individuals who have registered and is used, in part, to cross-check political donor

lists for prohibited contributions.

Registration with the bureau must occur within five days of the MGCB granting the entity or individual’s license application, including those applications for a transfer of interest in a casino licensee that results in the entity or individual acquiring more than 1% ownership interest in the casino licensee. Those who fail to register face civil fines and/or misdemeanor criminal penalties.

Those interested in furthering their understanding of the MGCB’s political campaign restrictions, including CIRA’s registration requirements, can refer to the agency’s summary of the applicable laws and regulations located at the following link: [http://www.michigan.gov/mgcb/0,1607,7-120-57144\\_57145-245363--,00.html](http://www.michigan.gov/mgcb/0,1607,7-120-57144_57145-245363--,00.html)

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