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The MICHIGAN GAMING Newsletter



U.S. SUPREME COURT RULES MICHIGAN CANNOT SUE BAY MILLS TRIBE IN VANDERBILT CASINO CASE

On Tuesday, May 27, 2014, the United States Supreme Court ruled that the State of Michigan is prohibited from suing the Bay Mills Indian Community (the "Tribe") to enjoin the further operation of the Tribe's casino in Vanderbilt, Michigan on lands approximately 125 miles south of its reservation in Michigan's Upper Peninsula. In a 5-4 decision, the Court found that the Tribe's sovereign immunity protects it from lawsuits unless Congress sets forth specific areas in which this immunity is abrogated. The State of Michigan had argued, among other things, that provision of the federal Indian Gaming Regulatory Act ("IGRA") abrogate the Tribe's sovereign immunity thus allowing the State's suit to enjoin casino gaming on off-reservation property. The Court disagreed, holding:

"The abrogation of immunity in IGRA applies to gaming on, but not off, Indian lands. We will not rewrite Congress's handiwork. Nor will we create a freestanding exception to tribal immunity for all off-reservation commercial conduct...Accordingly, Michigan may not sue Bay Mills to enjoin the Vanderbilt casino, but must instead use available alternative means to accomplish that object." 572 U.S. ___ (2014).

Writing for the majority, Justice Elena Kagan pointed out that, although Michigan could not sue to enjoin the operation of the Tribe's casino in Vanderbilt, it did retain the authority to bring suit against tribal officials or employees seeking an injunction against an illegal and unlicensed gambling operation under state law; and could further utilize the Michigan penal code and prosecute "...anyone who maintains – or even frequents – an unlawful gambling establishment." *Id.*

Following the issuance of the Supreme Court's opinion, Bay Mills Tribal

officials released a statement, saying “Congress and the Supreme Court have long recognized that a state cannot interfere with an Indian tribe’s sovereignty...We are gratified that the Court reaffirmed that longstanding principle today. Bay Mills, a federally recognized tribe, depends for its livelihood on revenues from gaming activities conducted in accordance with the Indian Gaming Regulatory Act. The Court’s decision affords proper deference to Congress’ judgment, and it will ensure that tribes like Bay Mills can continue to fund tribal education and perform other sovereign functions.”

Conversely, Michigan Attorney General Bill Schuette stated, “[t]oday the U.S. Supreme Court affirmed the State’s ability to restrain the illegal expansion of tribal gaming on state lands. The 5-4 decision upheld the injunctive power of states to sue tribal leaders to shut down illegal casinos, and reaffirmed the states’ authority to bring criminal charges against anyone engaging in illegal gaming on state lands.” A statement issued by Mr. Schuette’s office also provided that “[t]he Supreme Court’s ruling remands this case to district court for further proceedings. On remand, the State will continue its suit to close down the illegal casino. While the district court will not be able to order the Tribe as an entity to refrain from breaking state law as A.G. Schuette had originally requested, it will be able to order specific tribal officials to follow state law. Using this tool and others identified by the Supreme Court, the State will continue to enforce Michigan’s laws against illegal gaming.”

This matter arrived at the U.S. Supreme Court after the Vanderbilt casino was closed following the entry of a preliminary injunction by the U.S. District Court for the Western District of Michigan in March, 2011. The Bay Mills Tribe then appealed this decision to the Sixth Circuit Court of Appeals, which reversed the decision of the District Court last August. The State of Michigan then appealed the Sixth Circuit’s decision to the Supreme Court. In addition to briefs filed by the State of Michigan, the Bay Mills Tribe and the Federal Government, seventeen states also filed amicus briefs agreeing with the position of the State of Michigan, while additional amicus briefs in support of the Bay Mills Tribe were filed on behalf of more than fifty federally recognized Indian tribes and other tribal organizations.

A copy of the Supreme Court opinion can be found here: <http://1.usa.gov/1mzxslA>

MICHIGAN GAMING CONTROL BOARD RELEASES NOTICE OF SPECIAL PUBLIC MEETING

The Michigan Gaming Control Board (“MGCB”) has recently announced that it will hold a special public meeting on **Tuesday, June 10, 2014** at the MGCB Detroit office, Cadillac Place, 3062 West Grand Blvd., Suite L-700, in Detroit.

The meeting will begin at 9:30 a.m. with the staff briefing, followed immediately by the agenda items. The Cadillac Place is in Detroit’s New Center Area near the John Lodge Freeway (M-10), between Second Avenue and Cass Avenue. The Fisher Building and the Albert Kahn Building are nearby landmarks.

For more information regarding the MGCB, please visit their website at: www.michigan.gov/mgcb

AGA LAUNCHES NEW STRATEGIC CAMPAIGN

On Wednesday, May 27, 2014, the American Gaming Association (“AGA”) announced the launch of its “Get to Know Gaming” educational and advocacy campaign.

In early June, the AGA will release a detailed, nationwide survey providing current profiles of casino visitors designed to paint a factually-based picture of the typical casino consumer.

The AGA’s “Get to Know Gaming” campaign is designed to highlight community impacts related to gaming activity across the country, focusing on the partnerships formed between casino operators and local government and interest groups. The campaign will also focus on providing the public and policymakers with information related to the positive effects of casino gaming.

“The American Gaming Association will ensure

that our industry's extraordinary story is heard," said Geoff Freeman, president and CEO of the American Gaming Association. "We are entering a critical stage in the gaming industry's evolution. Nationwide expansion is running headfirst into unsustainable tax rates and regulatory inefficiencies. 'Get to Know Gaming' will help to establish gaming as a mainstream business and pave the way for critical, pro-innovation reforms."

According to the AGA, the "Get to Know Gaming" campaign will help pave the way for more states to view casino operators as partners and adopt policies that reflect that mindset.

In addition, the AGA is launching a champion development initiative to educate and recruit gaming allies beyond the Nevada borders. This effort will include actively engaging members of Congress to encourage community-building efforts and highlight gaming's benefits.

To sign up for the AGA's Get to Know Gaming campaign alerts and other AGA communications, please visit <http://www.americangaming.org/connect>.

SAGINAW CHIPPEWA TRIBE ANNOUNCES REVENUE SHARING PAYMENTS OF \$2.6 MILLION

On May 23, 2014, the Saginaw Chippewa Indian Tribe of Michigan ("Tribe"), announced that over \$2.6 million in revenue sharing payments will be distributed to various local schools and governments. Each year in May and December the Tribe distributes 2% of revenue generated from Class III gaming at the Tribe's two Michigan casinos in accordance with Tribe's tribal-state gaming compact with the State of Michigan.

This week, \$1.98 million will be distributed to various local government units in Isabella County, while Northern Bay and Aranac Counties will receive over \$627,000 in funding. The Tribe received a total of 439 requests for distributions, including 108 from units of local government and 331 from local schools. According to the Tribe's gaming compact, the revenue is to be used to compensate local units of government for increased public service costs associated with the

casino operation, as well as for local roads, public utilities, schools, and other public needs.

According to Michigan Gaming Control Board data, as of the Fall of 2013, the Tribe has distributed over \$120 million through the 2% revenue-sharing program.

The Michigan Gaming Newsletter would like to thank Jack Weyers for his contributions to this Newsletter.