

GAMING LEGAL NEWS



October 25, 2012 • Volume 5, Number 23

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RACING TO NEW OFF-RESERVATION GAMING IN OREGON

by Patrick Sullivan

Oregon currently has nine tribal casinos. A race is on to build new casinos to capture the Portland and Medford markets. The stakes are high – casino backers project \$400 million in adjusted gross revenue for a casino near Portland. But despite investments of millions of dollars, each runner is frozen at the starting line. A Medford casino proposed by the Coquille Tribe faces daunting administrative hurdles. A proposed non-Indian casino only 15 miles from downtown Portland is destined to fail at the ballot box. A casino in the Columbia Gorge town of Cascade Locks proposed by the Warm Springs Tribes has been shelved. Meanwhile, the Cowlitz Tribe's proposed 3,000-machine casino just across the Columbia River from Portland is mired in litigation.

For now, it looks like the Grand Ronde Spirit Mountain Casino will maintain its prized position as the closest casino gaming to Portland.

Non-Indian Gaming in the Gorge at "The Grange"

The latest casualty in this race is a group of Canadian investors that have been pumping money into November ballot initiatives. The initiatives would pave the way for construction of "The Grange," a development featuring 3,500 slot machines and 150 gaming tables only 20 minutes from downtown Portland at the former Multnomah Kennel Club racetrack.

Great Canadian Gaming Corporation of Vancouver, British Columbia, and Clairvest of Toronto, Ontario, have been conducting a relentless television and direct-mail marketing blitz, dominating Oregon airwaves and delivering glossy brochures to voters touting much-needed economic revitalization. However, after spending a reported \$5.4 million, the investors have suspended their campaign due to a dismal response from Oregon voters and opposition from the Governor. The initiatives will remain on the November ballot in Oregon, but they are certain to fail in light of the recent highly publicized announcement of the investors' pullout.

The Canadians have tried this before. In 2010, they attempted to pass similar initiatives but were soundly defeated. Governor John Kitzhaber continues to oppose the project, and he has called the ballot measures "bad for Oregon" and in violation of promises made to Indian tribes that Oregon would not allow competition from private casinos.

The Grange backers promised a hefty 5,000 Oregon jobs: 3,000 construction jobs over two years of development and then 2,000 full-time workers with salaries averaging \$35,000. The promoters called The Grange “an Oregon solution to the recently approved Cowlitz Casino” and promised to keep construction jobs in Oregon. Those promises earned the support of the AFL-CIO and construction unions, whose members in the area are suffering unemployment rates of up to 40 percent. Opponents led by the Grand Ronde Tribes spent at least \$1.6 million. Grand Ronde’s opposition is driven by the belief that a casino closer to Portland would cost it at least \$100 million in revenue at Spirit Mountain every year, according to a brief filed in the Tribes’ suit seeking to block the Cowlitz project. With so much at stake, it’s no wonder that the Grand Ronde Tribes have invested so much to fight off competition for Portland’s gaming dollars.

Measure 82 would amend the Oregon constitution to allow “tax-paying” – code for “non-Indian” – casinos within the state. Under the proposal, every new casino would require a separate ballot initiative, pay 25 percent of adjusted gross gaming revenues to the state, and be sited at least 60 miles from a tribal casino. Measure 83 is the specific initiative to allow gaming at The Grange in Wood Village, just off the Columbia River. In addition to gaming, The Grange would feature a hotel, restaurants, a farmer’s market, and a performance venue.

A September poll conducted by Portland television station KATU revealed that 27 percent of Oregonians are in favor of Measure 82, 43 percent are against it, and 33 percent are undecided. Opinions on Measure 83 track closely with Measure 82. Again, without continuing support of the backers, it is widely assumed that the measures will fail.

Coquille Class II Gaming in Medford

The Coquille Indian Tribe operates The Mill Casino, Hotel and RV Park on trust land on the Pacific coast in North Bend. The Tribe has been anonymously purchasing land in the Interstate 5 corridor about 170 miles southeast of North Bend in Medford, Oregon. The Tribe has purchased five acres outright and entered a lease agreement with the owners of the adjacent Bear Creek Golf Course. In September, Chief Kenneth Tanner announced the Coquille Tribe’s intention to seek trust status for the tribally owned property and operate a Class II gaming facility there. Although a Class II facility does not require a Tribal-State Gaming Compact, the land is an off-reservation site, meaning that the Secretary of the Interior must accept it into trust for the Tribe and the Governor must consent before any gaming may lawfully be offered thereon.

The Coquille Tribe was restored by a 1989 Act of Congress which also authorized the Secretary, in his discretion, to accept land into trust that is within in the Coquille “service area” of Coos, Curry, Douglas, Jackson, and Lane Counties. Medford is in Jackson County. The Indian Gaming Regulatory Act of 1988 generally prohibits gaming on land acquired by Indian tribes after the date of enactment, although there are certain exceptions for, *inter alia*, land restored to a tribe that has been restored to recognition.

While Coquille is a restored tribe, Department of the Interior regulations require that land may be used for gaming only if the land is taken into trust contemporaneously with the restoration, or within 25 years of restoration if a tribe is not already conducting gaming. The Coquille gaming facility in North Bend almost certainly means that the Medford site is unlikely to qualify for the “restored lands” exception.

As a result, the Medford site can only qualify for gaming if it is accepted for gaming as “off-reservation” land. For this trust acquisition, IGRA requires the Secretary to consult with state, local and tribal officials and make a “two-part” determination that gaming on the land will (1) be in the best interests of the tribe, and (2) not be detrimental to the surrounding community. This won’t be easy: the Secretary has only approved five “two-part” determinations since IGRA was passed 24 years ago, and the law gives the Governor an absolute veto over off-reservation land being taken into trust for gaming.

The gubernatorial “veto” actually is codified in the form of a required concurrence to the trust acquisition. With this veto, Oregon Governor John Kitzhaber is the Coquille’s greatest obstacle to conducting any gaming, including Class II, in Medford. The Governor has clearly stated his policy that one casino per Oregon tribe is enough. Accordingly, the Governor’s office has reiterated its one-casino-per-tribe policy when asked for specific comment on Coquille gaming in Medford. The Governor’s refusal to concur is not appealable, and he may withhold concurrence for any reason. More ominous for Coquille is that Governor Kitzhaber has high approval ratings and is generally considered certain to seek another 4-year term in 2014.

The Coquille expansion into Medford also faces stark opposition from the Cow Creek Band of Umpqua Tribe of Indians, which draws its customer base from the Medford and Eugene areas for its Seven Feathers Casino Resort, 72 miles north of Medford on Interstate 5. That tribe has promised to litigate any decision to accept the Medford land into trust. Indeed, the tribal General Counsel recently told the Medford Rotary club, “With all due respect, this is not Coquille territory.” This means that there would be protracted litigation even if Coquille could persuade the Secretary and the Governor to render approvals in the first place.

Warm Springs Proposals for Columbia Gorge Casinos

Another casualty in the race to expand Oregon gaming has been the Confederated Tribes of Warm Springs Reservation. Created by treaty in 1855, the beautiful but economically depressed Warm Springs Reservation is by far Oregon’s largest Indian reservation. The Warm Springs Tribes hoped to close the tribal Kah-Nee-Ta Casino on the reservation and open an off-reservation gaming facility in Cascade Locks, a small town overlooking the Columbia River. The site is land ceded by the Warm Springs Tribes in the Treaty of 1855.

The Tribes purchased a 25-acre parcel, secured the support of Cascade Locks, and signed a Tribal-State Gaming Compact with former Governor

Ted Kulongoski for a facility with 1,800 slot machines, 60 gaming tables and a 241-room hotel. The Compact provided for 17 percent revenue sharing with the State. In January 2011, the Secretary of the Interior approved the Compact, but strong opposition from other Oregon tribes and Governor Kitzhaber resulted in a shutdown of the project. Moreover, the Cascade Locks land has never been accepted into trust. Since then, the agreement with Cascade Locks has expired.

In February of this year, the Warm Springs Tribes moved their on-reservation gaming operations from Kah-Nee-Ta Resort to Indian Head Casino, a 500-machine facility on Highway 26, a major artery from Portland to the Mount Hood recreation area and Eastern Oregon but a much less desirable location than Cascade Locks. The Tribes intend to continue pursuing an off-reservation facility in the belief that on-reservation gaming will never meet the Tribes' economic needs.

Conclusion – Frozen at the Starting Line

Despite millions of dollars of investment to sway public opinion on both tribal and non-tribal gaming, casino expansion in Oregon is frozen. No new Oregon projects appear to be moving, and ongoing litigation is likely to delay the Cowlitz project for years. Through the geographical accident of proximity to Portland, the situation benefits the Grand Ronde Tribes most – Spirit Mountain will continue to reap the rewards of serving Portland's gaming market free from competition.

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EASTERN EUROPEAN GAMING SUMMIT

The 5th annual Eastern European Gaming Summit was held in Sofia, Bulgaria, last week. The big news up for discussion at the conference was Bulgaria's adoption of a new gaming law that includes internet gaming legislation and the licensing of foreign gaming equipment manufacturers as well as a new regime for testing and certification of gaming products by internationally recognized testing laboratories. Kaloyan Krastev, the Chairman of the Bulgarian State Commission on Gambling, announced that the Commission is diligently working on a regulatory framework for internet gaming. The Bulgarian government is also engaged in a general discussion of tax policy. It is possible that this will ultimately include a review of the taxation of the gaming industry. As a result, during the conference and related press conference, there was a discussion of what should be an appropriate tax policy for the gaming industry that is fair to the government, the gaming industry and the players. Other hot topics included the impact of implementation of a smoking ban in indoor and some outdoor public places and the restrictions on advertising by the gaming industry. Dickinson Wright lawyer Bob Stocker participated in the conference and related press conference and addressed internet gaming regulations and the impact of smoking bans and advertising restrictions on the gaming industry. The conference also conducted a special work session on responsible gaming, with an emphasis on the European approach to addressing responsible gaming issues.

DETROIT CASINOS' SEPTEMBER REVENUES INCREASE FROM SAME MONTH LAST YEAR: MICHIGAN GAMING CONTROL BOARD RELEASES SEPTEMBER 2012 REVENUE DATA

by Ryan M. Shannon

The Michigan Gaming Control Board ("MGCB") released the revenue and wagering tax data for September 2012 for the three Detroit, Michigan, commercial casinos. The three Detroit commercial casinos posted a collective 0.2% increase in gaming revenues compared to the same month in 2011. Aggregate gross gaming revenue for the Detroit commercial casinos decreased, however, by approximately 2.4% compared to August 2012 revenue figures, continuing the trend of a similar decrease in revenues between August and September in prior years.

MGM Grand Detroit posted positive gaming revenue results for September 2012 as compared to the same month in 2011, with gaming revenue increasing by slightly more than 4.5%. MGM Grand Detroit continued to maintain the largest market share among the three Detroit commercial casinos and had total gaming revenue in September 2012 of approximately \$50.8 million. MotorCity Casino had monthly gaming revenue exceeding \$35.5 million but posted a 7.5% decline in September 2012 compared to its September 2011 revenues. Greektown Casino posted a positive gaming revenue result in September 2012 compared to September 2011, with a 3.4% increase in total revenues. Greektown had gaming revenue of slightly less than \$27.8 million for September 2012.

The revenue data released by the MGCB also includes the total wagering tax payments made by the casinos to the State of Michigan. The gaming revenue and wagering tax payments for MGM Grand Detroit, MotorCity Casino, and Greektown Casino for September 2012 were:

Casino	Gaming Revenue	State Wagering Tax Payments
MGM Grand Detroit	\$50,767,759.78	\$4,112,188.54
MotorCity Casino	\$35,529,881.05	\$2,877,920.37
Greektown Casino	\$27,778,700.13	\$2,250,074.71
Totals	\$114,076,340.96	\$9,240,183.62

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