

GAMING LEGALNEWS

NINTH CIRCUIT DEMANDS INTERIOR EXPLAIN GLENDALE TRUST DECISION

by Patrick Sullivan

The U.S. Court of Appeals for the Ninth Circuit has required the Secretary of the Interior to reconsider a decision to accept an unincorporated parcel surrounded by the City of Glendale into trust for the Tohono O'odham Nation. This ruling reverses the court's prior decision upholding the trust acceptance, and it will slow but probably not derail the Tribe's efforts to add a fourth casino and enter the lucrative Phoenix market.

After a federal dam project flooded large parts of the Tribe's reservation near Tucson in 1960, Congress enacted the Gila Bend Indian Reservation Lands Replacement Act of 1986 authorizing the Tribe to purchase land to create a new reservation. Section 6(d) of the Act required the Secretary to accept land in any of three counties, including Maricopa County, home to Phoenix and Glendale, but not "within the corporate limits of any city or town" into trust.

Ordinarily, fee-to-trust decisions are made by the Department of the Interior pursuant to exhaustive regulations, but Congressional acts mandating trust acquisitions supersede the normal Department process for determining trust acquisitions.

In 2003, the Tribe purchased 135 acres of unincorporated Maricopa County land completely surrounded by the City of Glendale. This "county island" offered a prime location with access to the large Phoenix market and appeared to comply with the Act. In 2009, the Tribe announced its intent to use the land for gaming purposes, which opponents claim contradicts earlier assurances that it would not pursue "off-reservation" gaming. In response, the City of Glendale annexed a portion of the county island to prevent the trust acquisition, for which the Tribe sued the City. That litigation is ongoing.

The Tribe applied to the Secretary of the Interior to accept the remaining 54 acres of non-annexed land into trust. Glendale and local Indian tribes opposed the acquisition on the basis that the land is "within the corporate limits" of the City of Glendale in a geographic, if not jurisdictional, sense and was therefore ineligible for trust status under Section 6(d) of the Gila Bend Act.

The Secretary approved the trust application in 2010, finding that Section 6(d) unambiguously allowed the county island acquisition. Gila River Indian Community, which operates three Arizona casinos, several members of the Arizona legislature, and the City of Glendale immediately sued the Secretary in federal court. The district court upheld the Secretary's decision on the basis that the phrase "within the corporate limits" was ambiguous and did not address county islands,



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and it deferred to the Secretary's decision as a permissible construction of the Gila Bend Act.

In September, a Ninth Circuit panel affirmed the district court. However the Ninth Circuit agreed to rehear the matter and issued an opinion that considered, *inter alia*, the meaning of Section 6(d) and concluded that it was ambiguous. Although courts generally defer to agency interpretations of ambiguous statutes under the *Chevron* analysis, the panel held that the Secretary failed to "grapple with the ambiguity" and give a reasoned explanation for its decision.

The Secretary must now provide an explanation for the interpretation "supported by the history and background" of the Act. Because the court will defer to an explanation that is not "arbitrary and capricious," a revised decision with a reasoned explanation would likely be upheld. That revised decision will likely be issued soon.

The Tribe won a related victory earlier this month when a federal district court held that the Tribe's proposed Class III gaming in Glendale would not violate the Tribe's existing Tribal-State Gaming Compact. Adding to the debate is Arizona Congressman Trent Franks' introduction of federal legislation to block the Glendale casino, which is unlikely to become law.

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DETROIT CASINOS' APRIL REVENUES DECREASE FROM SAME MONTH LAST YEAR; MICHIGAN GAMING CONTROL BOARD RELEASES APRIL 2013 REVENUE DATA

by Ryan M. Shannon

The Michigan Gaming Control Board ("MGCB") released the revenue and wagering tax data for April 2013 for the three Detroit, Michigan, commercial casinos. The three Detroit commercial casinos posted a collective 2.68% decrease in gaming revenues compared to the same month in 2012. Aggregate gross gaming revenue for the Detroit commercial casinos also decreased by approximately 10.9% compared to March 2013 revenue figures, continuing a similar decrease in revenues between March and April in prior years.

MGM Grand Detroit posted lower gaming revenue results for April 2013 as compared to the same month in 2012, with gaming revenue decreasing by 6%. MGM Grand Detroit continued to maintain the largest market share among the three Detroit commercial casinos and had total gaming revenue in April 2013 of approximately \$49 million. MotorCity Casino had monthly gaming revenue in excess of \$39.7 million, with revenues increasing by nearly 1% in April 2013 compared to April 2012. Greektown Casino had monthly gaming revenue exceeding \$31.3 million, and posted a 1.75% decrease in revenues for April 2013 compared to the same month in 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 April 2013 were:

Casino	Gaming Revenue	State Wagering Tax Payments
MGM Grand Detroit	\$48,995,129.99	\$3,968,605.53
MotorCity Casino	\$39,735,195.61	\$3,218,550.84
Greektown Casino	\$31,309,701.67	\$2,536,085.84
Totals	\$120,040,027.27	\$9,723,242.21

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