



Iowa General Assembly

2003 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

MESKWAKI CASINO LITIGATION

Filed by the United States Court of Appeals - 8th Circuit
August 27, 2003

Sac & Fox Tribe of the Mississippi in Iowa/Meskwaki Casino Litigation, Nos. 03-2329/2355/2357/2390/2392/2393

<http://www.ca8.uscourts.gov>

Overview. The Sac & Fox Tribe of the Mississippi in Iowa (Tribe) operates the Meskwaki Casino*Bingo*Hotel (Casino) under a state-tribal compact with the State of Iowa as authorized by the federal Indian Gaming Regulatory Act (IGRA). The genesis of this litigation concerns an intratribal dispute between the current elected Tribal Council (Elected Council) and an interim council (Appointed Council) selected by the hereditary Chief of the Tribe. As noted in the Court of Appeals decision, the various cases “involve the intersection of an issue that is subject to federal regulation, namely, the operation of Class III gaming on Indian lands, with an issue that is subject to tribal control, namely, the right of a limited sovereign to interpret its own constitution and select its own leaders.”

Facts. In the fall of 2002, members of the Tribe dissatisfied with the Elected Council circulated petitions to seek a special election to recall the entire council based upon the 1937 Tribal Constitution. However, the Elected Council refused to call a special election. As a result, on March 3, 2003, the hereditary Chief of the Tribe appointed an interim council to govern the Tribe basing the Appointed Council's authority on a traditional form of Tribal government that predated the 1937 Tribal Constitution. On March 26, the Appointed Council took control of the Casino, other Tribal facilities, and some of the Tribe's finances. Following this action, the Elected Council sought confirmation from the Bureau of Indian Affairs (BIA) that it was the federally recognized governing body for the Tribe. After initially refusing to intervene in this matter, the BIA, since April 1, has, according to the Court of Appeals, “consistently recognized the Elected Council as the leadership of the Tribe.”

On April 30, the Chairman of the National Indian Gaming Commission (NIGC) issued a notice of violation (NOV) addressed to both councils. The NOV required the Elected Council, as recognized by the Secretary of the Interior, to reassume control of the Casino by May 2, 2003. The May 2 date passed without transfer of control of the Casino. Subsequently, on May 12, the Chairman issued a temporary closure order concerning the Casino. The order outlined the procedures available for administrative review of the order. The Appointed Council did not seek review of the order and continued to operate the Casino.

Litigation History.

- **Elected Council Suit Dismissed.** On April 8, 2003, the Elected Council filed suit in federal district court against the members of the Appointed Council and the banks that froze Tribal accounts or held deposits made by the Appointed Council. The suit sought both declaratory and injunctive relief based chiefly upon the Elected Council's claim that it, and not the Appointed Council, had authority over the Tribe and its finances. On April 15, 2003, the district court dismissed the Elected Council's action for lack of subject matter jurisdiction, characterizing the relief sought by the Elected Council as judicial intervention in a nonjusticiable, intratribal dispute. The Elected Council appealed this decision.
- **Temporary Closure Order Upheld by District Court.** On May 14, 2003, the Appointed Council filed suit in district court against the United States and the Chairman of the NIGC seeking a court order setting aside the NOV and the

closure order or, alternatively, a suspension of enforcement of the temporary closure order pending administrative review by the NIGC.

- On May 16, the United States, on behalf of the NIGC, instituted an action against both the Elected Council and the Appointed Council seeking enforcement of the closure order to prevent the occurrence of certain gaming activities pending administrative action by the NIGC on whether the temporary closure order should be made permanent.
- On May 19, the Elected Council moved to intervene in the Appointed Council's suit against the NIGC. The Elected Council asserted claims against the Appointed Council based upon the illegal gaming provisions of the IGRA and sought an order enjoining the Appointed Council from operating the Casino. In addition, the Elected Council asserted claims against the Chairman of the NIGC, and sought an order to enjoin the Chairman from enforcing the closure order, to instruct the Chairman to remove the Appointed Council, and to order the Chairman to limit its enforcement action to the illegal conduct of those seeking to prevent the Elected Council from operating the Casino.
- On May 22, the district court ruled on the various suits brought before it related to the temporary closure order. The district court granted the United States' motion for injunctive relief in the form of an order to enforce the temporary closure order. All other claims brought before the court by the Elected Council and the Appointed Council were dismissed on various grounds. On May 23, U.S. Marshals closed the Casino. Both Councils appealed the district court decisions. The Court of Appeals consolidated the appeals for its consideration.

Dismissal of the Court of Appeals Decision.

- **Elected Council's Suit Upheld.** The Court of Appeals upheld the district court's dismissal of the Elected Council's suit. The Court found that the district court properly characterized the suit as an intratribal dispute, and therefore not subject to judicial resolution, rather than a dispute concerning issues where jurisdiction would be proper, such as gaming regulation, other matters subject to federal regulation, or intergovernmental relations.
- **Temporary Closure Order Upheld and Case Remanded.** The Court of Appeals held that the district court was correct in dismissing the Appointed Council's suit challenging the temporary closure order. The Court agreed that the suit should be dismissed based upon the failure of the Council to exhaust its administrative remedies prior to seeking judicial review. The Court found that the Indian Gaming Regulatory Act provided for an administrative mechanism to review a temporary closure order and that the Council must pursue an administrative appeal of this action prior to seeking judicial review.
- The Court also agreed with the district court's decision to grant a preliminary injunction to enforce the temporary closure order. The Court noted that the IGRA does not expressly authorize district court enforcement of a temporary closure order. While the Court rejected the claim that the Chairman was not required to show irreparable harm in order to justify the injunction, the Court did find that the district court did not abuse its discretion in finding irreparable harm if the temporary closure order was not enforced by way of an injunction. The Court concluded that the harm to the NIGC of not being able to enforce its exercise of its regulatory authority under the IGRA in issuing a temporary closure order outweighed any harm from the closure of the Casino.
- In granting the preliminary injunction, the district court dismissed the Elected Council's claims to intervene in the litigation. The claims the Elected Council sought to raise included a state law trespass claim against the Chairman of the NIGC and the Appointed Council, a claim seeking to enjoin illegal gaming under the IGRA, and a claim seeking to enjoin the Chairman's enforcement of the closure order. The Court of Appeals held that the non-IGRA claims should be dismissed since relief could be granted to the extent the Court first resolved the intratribal dispute between the Elected and Appointed Councils. The Court did hold, however, that the Elected Council could pursue its illegal gaming claims based upon the IGRA. As a result, the Court remanded the case to the district court for consideration of whether the viability of the Elected Council's illegal gaming claim requires modification of the injunctive relief granted the United States.

Further Proceedings.

- **Federal District Court Reconsiders Injunctive Relief and Claim of Illegal Gambling Under IGRA.** As a result of the Court of Appeals decision, the district court will now reconsider the scope of injunctive relief granted the United States related to the temporary closure order in light of the Court's reinstatement of the Elected Council's claim of illegal gaming under the IGRA.
- **National Indian Gaming Commission Permanent Injunction.** On September 10, 2003, the NIGC made the temporary closure order issued by the Chairman permanent. In making its determination, the Commission first deferred to the Secretary of the Interior's determination that the Elected Council is the recognized tribal leadership. The Commission then concluded that since the federally recognized tribal leadership is not in control of either the tribal government or the Tribe's gaming operation, the gaming is, in effect, unregulated, and closure of the Casino is the only

appropriate remedy. The Commission noted, however, that gaming may resume if it determines that the Tribe, acting through a duly elected, federally recognized Tribal Council, is in control of the Tribe and Casino.

Tribal Election Scheduled. In its September 10, 2003, order, the NIGC noted that a tribal election is scheduled for October 21, 2003, that the Bureau of Indian Affairs will supervise the election, and that both Councils will be bound by the results of this election.

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