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Editor

Current Developments and Important Issues in Indian Gaming Law

BY DENNIS J. WHITTLESEY

Welcome to the Third Issue of *Indian Gaming Lawyer*, a publication dedicated to issues associated with the Indian gaming industry in the United States. This issue is devoted to current developments and always-important issues for the Indian Gaming industry.

With this predicate, our goal is to provide articles that are both important and interesting. However, the opening article pays tribute to the recently-deceased Sue Shaffer, long-time Chairman of Oregon's Cow Creek Band of Umpqua Tribe of Indians. It is no secret that this writer worked closely with Sue for a number of years and loved her, as did so many others. Her story is compelling.

REMEMBERING A GREAT TRIBAL CHAIR AND A GOOD FRIEND

Sue Shaffer not only was a leader in Indian Country in general, but she certainly was the Mother for Indian Gaming in her home state. The lead article speaks for itself, but is sufficient to say here that she was someone who had big thoughts and made them come true. This is true with her goal of securing an Act of Congress extending federal recognition to her tribe which was otherwise barred through the long out-of-date Termination policies of the 1950s. It also was true when she envisioned casino gaming in Oregon, despite a provision in the State Constitution prohibiting the operation of a "casino" anywhere within the state.

It was this writer's privilege to have known her as a client and also as a friend. The remembrance says it all.

INDIAN GAMING'S GROWING TREND

For the second year in a row, we are honored to publish a summary of the new edition of *Casino City's Indian Gaming Industry Report* compiled and presented by the incomparable Alan Meister, who researches and writes this report each year. He has become the authoritative analyst of the economic growth and development of the industry and, in this capacity, has worked with all elements of the industry over the years.

The value of this work is that he reports all of

the economic information, even to the point of identifying the states in which there has been Indian gaming growth and declines from the previously-reported year. In short, he gathers vast amounts of data, analyzes it all, and renders his annual report. It is both a barometer and Bible for those of us working within Indian Gaming.

CURRENT BATTLES AND THE FUTURE OF OFF-RESERVATION INDIAN GAMING

The Indian Gaming Regulatory Act prohibits gaming on land taken into trust after October 17, 1988, the date on which it became law. However, IGRA Section 20 establishes certain exceptions to that general rule, the first of which allows "off reservation" gaming provides for tribes that do not otherwise qualify for any of the other statutory exceptions. It requires that the Interior Secretary make initial determinations as to a tribe's eligibility for gaming subject to, and dependent on, the Governor's concurrence in that decision. Still, the provision is controversial.

With that said, Heidi McNeil Staudenmaier and Brian Daluiso have written a comprehensive article exploring the issue in general and discussing relevant litigation in particular. For those readers who are not fully versed in this provision of the law, the article will be an invaluable resource.

CLASS II E-BINGO GAMING SYSTEMS FINALLY RECEIVES JUDICIAL APPROVAL

Class II gaming is a critical component of the gaming inventory at tribal casinos. In addition, E-gaming is the subject of a great deal of current dialogue in Indian Country which generally is looking at new technologies for expansion of the gaming opportunity. Frequent contributors to the magazine Kevin Quigley and Tom Foley are in the forefront of this activity, and they played a role in the Desert Rose Bingo litigation that is the subject of this article.

The importance of this article is shown by its title. While there is resistance to e-gaming in many sectors, the simple truth is that technology will ultimately be accepted. And, as the article reports, the barriers are already beginning to break down.

THE CONTINUING ATTACK ON TRIBAL SOVEREIGNTY OF THE SUPREME COURT

Dean Luthey has written a provocative and timely article that deals with issues unfolding while he was writing. Indeed, one of the latest developments in the applicable law came in the Supreme Court decision in the case of *Lewis v. Clarke*, which was rendered *after* Dean had written his article. He quickly dug in and revised the article with an analysis that would have required weeks of study and writing for most of us. This article is destined to become required reading for anyone who hears of it.

“RESTORED LAND” FOR A RESTORED TRIBE: THE SUCCESSFUL QUEST OF THE KARUK TRIBE OF CALIFORNIA

This article is written by the noted Ethnohistorian Stephen Dow Beckham, and it deals with a second exception to gaming on lands acquired after IGRA became law. That provision allows gaming for tribes that had federal status, lost it, and subsequently regained tribal recognition. Such tribes are known as “restored tribes” in Indian Gaming. While they can conduct gaming as restored tribes, they can only do so under this provi-

sion if the gaming is to be conducted on lands previously considered to have been within their “tribal lands” to which their occupancy and title claims were terminated and subsequently restored. Such lands are known as “restored land” in Indian Gaming.

Prior to Dr. Beckham’s becoming involved with the Karuk Tribe, a former tribal attorney had sought restored land status for land within the Town of Yreka, California, and the result was a resounding denial, as is explained in the article. Working with new legal counsel and tribal officials, Dr. Beckham developed the historical case for Karuk tribal recognition, loss of recognition and subsequent restoration of recognition. He also documented historic Karuk occupancy of the proposed gaming site and his work became the blueprint for the subsequent submission of a new Petition for reconsideration of the previous denial. While it is rare in this writer’s experience for the Department of the Interior to reverse a prior Departmental determination of this type, the second Karuk effort was successful. That casino is now under construction and will be operating within a very short time from the publication of this issue.

We hope you enjoy the publication. ✨

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