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Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

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Indian Gaming

AGENCY:. Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Mashantucket Pequot Gaming Procedures.

SUMMARY: Pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2710(d)(7)(B)(vii), the Secretary of the Interior shall prescribe procedures for Class III gaming to be conducted by the Mashantucket Pequot Tribe of Connecticut. The Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority, proposed Mashantucket Pequot Tribe gaming procedures by his notice of opportunity to comment on Mashantucket Pequot Gaming Procedures as published in the **Federal Register** on April 17, 1991. Interested parties were afforded an opportunity to comment.

All comments received by close of business May 17, 1991, were reviewed and considered. The Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority, now approves the Mashantucket Pequot Tribe gaming procedures, modified as described below.

SUPPLEMENTARY INFORMATION: A total of 17 comments were received by close of business May 17, 1991. Nine commentors expressed support of the proposed procedures for the Mashantucket Pequot gaming rules stating the proposed casino will have extremely positive effects on local business and economy.

One commentor expressed support for the right of the Mashantucket Pequot Tribe to conduct Class III gaming activities under the proposed gaming procedures and added that to do otherwise would completely undermine the provisions of the Indian Gaming Regulatory Act.

One commentor expressed general opposition to the Mashantucket Pequot's proposed casino because of the impact it would have on the area's pastoral setting.

One commentor enclosed a list of 90 signatures identified as people in the general area who opposed the Pequot gambling casino because of their concern for the character of Ledyard, Connecticut.

Several commentors objected to the Secretary's decision to permit casino gambling on the Mashantucket Pequot Reservation. The Secretary is required by the Indian Gaming Regulatory Act to prescribe procedures consistent with the compact chosen by a court appointed mediator. The compact chosen by the mediator was proposed by the State of Connecticut and included casino gaming. Therefore, the Secretary's role in determining whether casino gambling would be conducted was ministerial.

With respect to horse race wager "take out," a commentor stated the off-site operation on Indian land should be treated no differently than the existing off-site operations in Connecticut. This concern was also raised by the State although the State believed that State percentages for take out did apply. The State asked for additional language to make more explicit the applicability of the State take out. We agree that it is intended that the procedures apply State take out percentages, but the procedures are not ambiguous as to the applicability of the State take out percentages and, therefore, need not be changed.

The only other substantive comments received were provided by the State of Connecticut. They include assertions that the authority of the Secretary to impose the procedures is limited, recommendations to amend the procedures to effectuate the intent of the parties, the addition of more extensive regulations to protect the environment and public health and safety, application of state tax and assessment provisions, and a state legislation provision.

We conclude that the preferred method for dealing with the State recommendations is through negotiations between the Mashantucket Pequot Tribe and the State and amendment of the procedures as provided for in section 17 of the procedures. We believe that section 17 of the procedures is intended to cover negotiations on such issues, and this approval assumes good faith negotiations between the parties on these issues will occur. The procedures were written and proffered by the State as its last, best offer for the implementation of tribal gaming. The State's offer resulted from intensive negotiations with the Tribe. Furthermore, we have made some modifications in the procedures, as described below, based on the State's views as to what is necessary to provide sound gaming procedures. The State should present its additional recommendations to the Tribe for renegotiation of the procedures as provided for under section 17 of the procedures.

Two areas of the procedures were modified. First, the State asserts its power to properly investigate and license all gaming employees and that a New Jersey license should not automatically qualify an applicant for a temporary Connecticut license. The State recommends, at a minimum, a criminal check and a permanent New Jersey license should be required for a temporary Connecticut license. We agree with the State's concern that a minimum criminal check must be conducted for temporary licensing of gaming employees. Although the State of New Jersey does, as a practical matter, conduct criminal checks before issuing temporary licenses, it is not legally required to do so. Therefore, we modified section 5(d) of the procedures to remove reliance on New Jersey licenses, but also included a provision to assure that the State of Connecticut will issue temporary licenses on a timely basis.

Secondly, the State desires an explicit statement that tort procedures must be developed before the Tribe may engage in gaming. Rather than relying on the implicit requirement in the procedures, we concur that the requirement should be explicit and have changed section 3(g) accordingly.

The State, and one other commentor, assert that the Secretary does not have the authority to permit commercial casino gaming on the Tribe's reservation. This is essentially the same argument presented previously by the State. No new arguments or evidence are offered to cause the Office of the Solicitor to change its previous legal conclusions on the subject, as referenced in the April 17, 1991, publication of the proposed procedures.

The State asserts that it retains its right to amend its laws. This issue is not before the Department in the context of the proposed procedures. It is therefore inappropriate to comment on the State's discussion, other than to say that it is the intent of these procedures that the issue will be considered should the State enact relevant amendments to its laws.

The State also opines that a tribal ordinance is necessary before the casino gaming can be authorized under the procedures. The Tribe must pass a gaming ordinance before conducting gaming, and the Tribe informs us that it has passed a tribal gaming ordinance. We are unaware of any requirement that an ordinance must be passed prior to development of the gaming procedures. Irrespective of what the Tribe has already done, we feel it is illogical for the Tribes to take further steps in enacting gaming ordinances until final procedures are in place so that tribal

ordinances can be made consistent with approved procedures.

The State asserts its right to investigate entities providing financial services to the gaming operations as well as any enterprise providing goods or services to the gaming establishment. The State argues the proposed procedures must be amended to insert clarifying language. We conclude the provisions in section 6(j) of the proposed procedures adequately cover financial as well as other sorts of services. Any further clarification felt needed by the State or the Tribe can be negotiated under section 17.

The State further recommends the deletion of the $50,000 investigatory threshold commenting that its inclusion in the procedures was a typographical error. Upon review we believe that the inclusion of the numerical figure may indeed have been a typographical error. The State asserts that the dollar threshold significantly thwarts the intent of the parties that all aspects of the tribal gaming activities be as free of criminal element as is possible. The Tribe's concern is that investigation of all vendors with no dollar threshold may make it prohibitively expensive to do business with minor suppliers, if the background investigation agreed upon by the parties is too wide ranging and too costly. Any further clarifications concerning the scope of the authorized investigations can be negotiated under section 17 by the State and the Tribe and should not be, in our view, the basis for rejecting this provision. Thus, we decline to accept this recommendation.

Further, the State recommends the types of gaming activities allowed must be clarified so as not to limit "services" as defined in the procedures and to reiterate that the procedures contained a prohibition of video slot machines. We do not feel such clarification is necessary as the language in section 15(a) of the procedures is adequate.

The State alleges that exempting gaming service enterprises with a current New Jersey registration from Connecticut registration is inconsistent with previous sections. We do not interpret the language in the proposed procedure as providing permanent waivers but rather as an interim process which remains effective for the first twelve months following the effective date of the procedures. The temporary registration does not preclude the applicant from satisfying the State's requirements for permanent registration. Thus, we decline to accept the State's recommendation to delete the reciprocity provision.

The State proposes to license officers of the Tribal Gaming Commission who are not tribal members. At this time, such decisions should be left to the Tribe.

The State further recommends that the State law enforcement agency be allowed to investigate all employees associated with gaming activities and that a list of persons "barred from gaming facilities" be compiled prior to the opening of the facilities. The State desires to investigate all employees regardless of whether they are gaming or non-gaming employees, or their employment location. The State contends that all necessary steps must be taken to prevent infiltration of unsuitable people in any part of the gaming operations. As presently provided in the proposed procedures in section 5(j), the State contends the existing provision is too restrictive and allows for a distinction between employees that rests merely on location. The State recommends that the "barred" list include those exclusions made by Connecticut, New Jersey and Nevada. Expansion of the State's authority over non-gaming employees and exclusion of patrons does not appear warranted at this time. Therefore, we decline to accept this recommendation.

Additionally, the State recommends that a detention area be established to hold offenders prior to transfer to state facilities. However, the Tribe may wish to pursue other alternatives such as renting space in a local detention facility or cross-deputizing local and state law enforcement officials. These alternatives could prove less costly and more efficient and can be the subject of negotiations under section 17.

The State recommends that it be allowed to develop its own ability to regulate video facsimile devices and retain its individual licensing authority even where management contracts are approved by the National Indian Gaming Commission. Pending issuance of guidance by the National Indian Gaming Commission, the provisions covering these issues in the procedures are acceptable as they are now articulated. Further revisions should be made through tribal-state negotiations.

The State asserts that the Tribe and State did not intend to permit the extension of credit for gambling. However, the explicit provisions in appendix A covering the extension of credit indicate the State and Tribe's understanding that credit would be extended.

The State also commented on the annual audits of the gaming activities. Appendix B at page B-4 adequately addresses the system of accounting and internal controls.

The State recommends amending the default authority as presently provided for in the proposed procedures. The State proposes to establish timeframes for notifications and remedy before the Tribe gaming agency could exercise its authority under the default provision. The proposed timeframes, however, could result in a lapse of service. Especially in the area of law enforcement and licensing, such a lapse would not be conducive to sound administration and control of gaming. Therefore, we decline to accept this recommendation.

The State recommends an expansion of the procedures on the environment and public health and safety. Although the broadening of these requirements may enhance the quality of life on the reservation, such requirements are usually left to tribal and federal law. We therefore decline to expand unilaterally those procedures.

The State also seeks to broaden its control over liquor on the rest of the reservation. This suggestion is beyond the scope of gaming procedures covered in this document. This document does not change the extent to which State laws may apply to liquor on the reservation.

Expansion of state tax provisions and assessments are also sought by the State. Since these provisions were bargained for between the State and Tribe, we do not believe it appropriate to modify these provisions.

Finally, the State requests language acknowledging the need for State legislation in order for the State to assume the responsibilities assigned to it under the procedures. We assume that the State, of course, recognizes its responsibility to seek State legislation if it is required. We cannot anticipate the legislation which the State may conclude will be needed as gaming proceeds. Therefore, we decline to issue a federal list of required State legislation. In the event that any particular legislation proves to be needed and is not passed, the default provision will permit the Tribe to enact ordinances as needed and assume the responsibilities involved.

Final Procedures: The gaming procedures of the Mashantucket Pequot Tribe hereby consist of the gaming compact, as amended, which was proffered by the State of Connecticut, chosen by the mediator and proposed as procedures in an April 17, 1991, **Federal Register** notice. The amendments consist of the following:

Section 3(g): Tort remedies for patrons. The Tribe shall establish, prior to the commencement of class III

gaming, reasonable procedures for the disposition of tort claims arising from alleged injuries to patrons of its gaming facilities. The Tribe shall not be deemed to have waived its sovereign immunity from suit with respect to such claims by virtue of any provision of this Compact, but may adopt a remedial system analogous to that available for similar claims arising against the State or such other remedial system as may be appropriate following consultation with the State gaming agency.

Section 5(d): Temporary Licensing. Unless the State criminal record check undertaken by the State gaming agency within ten days of the receipt of a completed application discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant pursuant to subsection (e) are apparent on the face of the application, the State gaming agency shall upon request of the Tribal Operation issue a temporary gaming employee license to the applicant, within ten days of the receipt of a completed application, which shall expire and become void and of no effect upon the determination by the State gaming agency of the applicant's suitability for a gaming employee license.

EFFECTIVE DATE: May 31, 1991.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS 4603, 1849 "C" Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington DC (202) 208–7445.

Dated: May 24, 1991.

Eddie F. Brown

Assistant Secretary—Indian Affairs.

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