



STATE OF FLORIDA

BILL McCOLLUM
ATTORNEY GENERAL

September 19, 2008

VIA U.S. MAIL AND FACSIMILE TRANSMISSION (202) 632-7066

The Honorable Philip N. Hogen
Chairman, National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

Re: Class III Gaming by the Seminole Tribe of Florida

Dear Chairman Hogen:

As you are probably aware, the Florida Supreme Court held on July 3, 2008 that the Governor of Florida lacked the authority to bind the State to a class III gaming compact with the Seminole Tribe of Florida. That decision is now final. Because the Seminole Tribe continues to conduct illegal class III gaming activities in Florida, I request that you issue an order of temporary closure of these activities.

In order for class III gaming to be legal on Indian lands, IGRA requires, *inter alia*, that a compact be "entered into" and "in effect." 25 U.S.C. § 2710(d)(1). Whether or not a state has entered into a compact is a question of state law. Pueblo of Santa Ana v. Kelly, 104 F.3d 1546, 1557 (10th Cir. 1997) ("[s]tate law must determine whether a state has validly bound itself to a compact"); see also Willis v. Fordice, 850 F. Supp. 523, 532-33 (S.D. Miss. 1994) (applying Mississippi state law to determine whether the state had entered into the compact).

A compact is "in effect" when "notice of approval by the Secretary [of the Interior] of such compact has been published by the Secretary in the Federal Register." 25 U.S.C. § 2710(d)(3)(B). A compact that has not been "entered into" pursuant to state law, however, cannot be given subsequent effect by Secretarial approval. Pueblo of Santa Ana, 104 F.3d at 1555 ("We therefore conclude that the 'entered into' language imposes an independent requirement and the compact must be validly entered into by a state before it can go into effect, via Secretarial approval").

On November 14, 2007, the Governor of the State of Florida and the Seminole Tribe of Florida (the "Tribe") executed a Tribal-State compact for class III gaming on the Tribe's Indian

lands (the "Compact") and submitted the Compact to the Secretary for his review pursuant to 25 U.S.C. § 2710(d)(8).¹ On November 19, 2007, the Florida House of Representatives filed a Petition for Writ of Quo Warranto in the Florida Supreme Court seeking to invalidate the Compact because the Governor did not have authority to "enter into" a class III gaming compact without legislative ratification.

The Department of the Interior stated in a brief in a proceeding before the United States District Court for the Northern District of Florida that "[i]f the Governor of Florida is determined by the Florida Supreme Court not to have the authority, the compact is not entered into and the publication does not authorize Class III gaming." The Tribe also relied on this conclusion in a court proceeding, stating that "[i]f the Florida Supreme Court were to rule that the Governor lacked authority to sign it on behalf of the State, the Compact would be void *ab initio*." The Florida Supreme Court held that the "Governor lacked the authority to bind the State to a compact that violates Florida law as this compact does." Fla. House of Representatives v. Crist, No. SC07-2154, 2008 Fla. LEXIS 1220, at *40 (Fla. July 3, 2008). Rehearing in that case was denied on September 11, 2008.

Despite the Florida Supreme Court's ruling, the Tribe continues to offer banked card games and class III slot machines. The Tribe has publicly indicated that it will continue to offer such gaming activities unless action is taken by the federal authorities or a federal court. Dara Kam, Florida high court won't hear Seminole gambling appeal, Palm Beach Post (Sept. 11, 2008), available at <http://www.palmbeachpost.com/state/content/state/epaper/2008/09/11/0911seminoles.html>. Indeed, a recent opinion from the United States District Court for the Northern District of Florida, subsequent to the Florida Supreme Court's decision, refused to enjoin the Tribe's operations, relying in part on 18 U.S.C. § 1166.

In summary, the Compact is invalid, making class III gaming on Indian lands illegal and subjecting the Tribe to enforcement action by the NIGC. Again, as I am sure you are aware, as Chairman you have the authority pursuant to 25 USC § 2705 to "issue orders of temporary closure of gaming activities as provided in section 14(b) [25 USCS § 2713(b)]."²

I find myself and the State of Florida in the untenable position of having a tribal gaming operation, which everyone acknowledges is unauthorized, ongoing without the jurisdiction to stop the illegal gaming activities. As a former United States Attorney, I know you can understand the frustration of a law enforcement official forced to stand by and watch illegal activities going on with impunity. I would therefore request that you, as the regulatory official

¹ The Secretary did not approve or disapprove the Compact within forty-five (45) days from the date of its submission. Accordingly, the Compact is "considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this Act." 25 U.S.C. § 2710(d)(8)(C).

² 25 USCS § 2713 provides:

(b) Temporary closure; hearing.

(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this Act, of regulations prescribed by the Commission pursuant to this Act, or of tribal regulations, ordinances, or resolutions approved under section 11 or 13 of this Act [25 USCS § 2710 or 2712].

holding the power to enforce this law, take action immediately to see that the Tribe ceases its illegal activity until a valid compact can be consummated with the State of Florida.

I am available to meet with you either by phone or in person to discuss this vitally important matter. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill McCollum", written in a cursive style.

Bill McCollum
Attorney General

cc: The Honorable Charlie Crist
The Honorable Ken Pruitt
The Honorable Marco Rubio
The Honorable Steven Geller
The Honorable Dan Gelber