

Court to interpret provisions of gaming compact

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On Dec. 31, the Cherokee, Chickasaw and Choctaw nations filed suit against the governor, asking a federal judge to determine whether Oklahoma tribes have the right to continue gaming activities under the tribal-state gaming compact offered by the state of Oklahoma to the tribes in 2004.

What is the tribal-state gaming compact?

In 1988, Congress enacted the Indian Gaming Regulatory Act to create a framework for states and Indian tribes to cooperate in regulating on-reservation tribal gaming. The IGRA provides a tribal-state compact as the mechanism for facilitating the unusual relationship in which a tribe might affirmatively seek the extension of state jurisdiction and the application of state laws to activities conducted on Indian land. The tribal-state compact provides the state with the only lawful means for directly asserting any governmental interests related to tribal gaming activities.

Absent a negotiated compact between the tribes and the state, Class III gaming (casino games, slot machines and horse racing) is forbidden by the IGRA. While tribes are incentivized to negotiate compacts to gain permission to conduct Class III gaming, the state is incentivized to negotiate compacts to gain a share of the gaming revenue.

In 2004, Oklahoma and the tribes entered into a compact that would allow the tribes to conduct Class III gaming activity on Indian lands in exchange for the tribes' disbursement of

periodic revenue-share payments to the State. Part 15.A. of the compact sets forth the requirements that must be met for the compact to go into effect. Part 15.B. provides that the compact's initial term will expire on Jan. 1, 2020, and "shall automatically renew" for successive 15-year terms on that same date, if at that time "organizational licensees" (e.g. horse race tracks and others) are authorized to conduct certain electronic gaming pursuant to any governmental action of the state or court order following the effective date of the compact. Part 15.C. states that the compact will remain in effect until either its term expires without renewal or it is terminated by mutual consent of the parties.

What is the central issue of the dispute?

The tribes are seeking a declaratory judgment on the single question of whether the compact was renewed on Jan. 1 for another 15-year term. The tribes argue the state has taken actions that satisfy Part 15.B.'s conditions for automatic renewal – through the actions of the Oklahoma Horse Racing Commission's issuance of licenses for electronic gaming and the state's enactment of changes in state-regulated electronic gaming. On the opposite side, Gov. Stitt believes that the requirements that allow for automatic renewal have not been met. Since the summer of 2019, Stitt has maintained the compact would expire Dec. 31, 2019, and gambling at tribal casinos would become illegal as of Jan. 1, 2020.

Why is this a high-stakes lawsuit?

The dispute between the state and the tribes is significant. In Fiscal 2018, 31 tribes operated 131 facilities offering Class III games and collected \$2.3 billion in revenue, with approximately \$139 million paid to the state. If Chief Federal Judge Timothy DeGiusti determines the compact was not renewed, the future of Class III gaming is unclear. While the tribes would absorb the brunt of a non-renewal declaration, those that conduct business with the tribes and gaming facility

patrons would likely see substantial changes to the gaming landscape they once knew – whether it be an elimination of Class III gaming in Oklahoma or an alteration of the terms of the 2004 compact. Regardless of the outcome of the lawsuit, the court's declaration will likely have a lasting effect upon the tribal-state relationship.