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Editor in Chief:

David D. Waddell, Esq.
Phone: 517.507.3859
waddell@rmclegal.com

Senior Gaming Analyst
& Editor:

Robert R. Russell, II
Phone: 517.507.3858
russell@rmclegal.com

Reporter

Douglas L. Minke
Phone: 313.221.9380
minke@rmclegal.com

Reporter

Blaine R. DeGracia
Phone: 517.507.3857
degracia@rmclegal.com

Subscription information:
info@michigangaming.com

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RMC Ventures, LLC

University Place Center
333 Albert Ave, Suite 450
East Lansing, MI 48823
Phone: 517.507.3860
Fax: 517.908.0235
www.rmclegal.com

The MICHIGAN GAMING Newsletter



FEDERAL APPEALS COURT AFFIRMS SUMMARY JUDGMENT IN FAVOR OF THE GUN LAKE BAND

On Tuesday, in a 2-1 decision, the United States Court of Appeals for the District of Columbia Circuit affirmed the Federal District Court's grant of summary judgment in favor of the U.S. Department of the Interior ("DOI") in the case of *Michigan Gambling Opposition v Kempthorne*. Oral argument in this case was held on October 19, 2007.

The case involves the efforts of Michigan Gambling Opposition (MichGO), a West Michigan organization formed to try to stop the expansion of casino gaming within the state. MichGO has challenged the DOI's decision to take 147 acres of land into trust for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (the "Gun Lake Band") in Wayland Township, near Grand Rapids, Michigan. Once all regulatory processes are complete, the Gun Lake Band plans to build and operate a Class III casino on the disputed land.

In challenging the DOI's decision, MichGO has argued, among other things, that the approval of the proposed casino violates the National Environmental Protection Act and that Section 5 of the Indian Reorganization Act is an unconstitutional delegation of authority to the Secretary of the DOI. In a 17-page *per curiam* opinion, the Court rejected MichGO's arguments, and affirmed the decision of the DOI to take the land into trust.

MichGO's attorneys have told *The Grand Rapids Press* that they plan to file for a stay to prevent the land from being taken into trust while they petition the U.S. Supreme Court to hear an appeal. A copy of the court's opinion can be viewed by clicking [here](#).

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STATE DISPUTE WITH POKAGON BAND CONTINUES TO GROW

On April 11, the Michigan Gaming Control Board wrote a letter to Michigan Attorney General Mike Cox asking him to decide upon a legal course of action against the Pokagon Tribe of Potawatomi Indians, which operates the Four Winds Casino in New Buffalo, Michigan, in order to compel the distribution of the revenue sharing payments, as required under the 1998 Tribal-State Compact.

Under its Class III compact with the State, the Pokagon Band agreed to pay 8% and 2% of net revenue from electronic gaming devices to the state and local government, respectively. The Pokagon Band has withheld the first of its semi-annual revenue sharing payments, as the Tribe is concerned with prior decisions made in forming the Local Revenue Sharing Board (LRSB). The LRSB is responsible for deciding how the 2% of revenue will be dispersed to the local government. These payments have been placed in an escrow account until the dispute is settled.

Since the opening of the Pokagon Band's New Buffalo Four Winds Casino Resort in August of 2007, the casino has generated nearly \$49 million in electronic gaming revenues, according to the Michigan Gaming Control Board. These figures lead to revenue sharing payments of nearly \$980,000 to be paid to local governments, schools and others directly affected by the casino, and approximately \$3.9 million to the State of Michigan.

SAGANING EAGLES LANDING CASINO "EXCEEDING EXPECTATIONS"

According to reports published in *The Bay City Times*, Saganing Eagles Landing Casino generated more than \$17 million in net profit for its first 90 days of operation from January 1 through March 31. Frank Cloutier, spokesman for the Saginaw Chippewa Indian Tribe, told *The Bay City Times*, "[w]e're very happy with it. It's safe to assume that it's exceeding expectations."

On Monday, the Saginaw Chippewa Tribe announced that it will distribute roughly \$347,000 in local grants to eligible local groups, as determined by the Saginaw Chippewa Tribal Council. Currently, 30 groups have submitted grant applications, including the Standish-Sterling Community School District and City of Pinconning, which is requesting \$30,000 for a new police patrol car to handle increased traffic control resulting from the casino. The Saginaw Chippewa Tribe will distribute these grants on May 21. Mr. Cloutier has also said that the Tribe expects to distribute a second, larger grant in October.

As revenues have grown at the Saganing Eagles Landing Casino, the casino has also increased its workforce from 298 to 309 employees, and is in the process of building a new parking lot to handle the increased traffic.

KENN CHRISTOPHER OF THE OFFICE OF RACING COMMISSIONER ANNOUNCES RETIREMENT FROM STATE SERVICE

Yesterday, Kenn Christopher, the Special Projects Administrator for the Office of Racing Commissioner, announced his retirement from the state agency. Mr. Christopher has been a dedicated public servant for the ORC since 1975, and has worked for nine different racing commissioners and administrations. Mr. Christopher is extremely knowledgeable with regard to the history of horse racing in this state and has tirelessly promoted the industry to everyone he comes in contact with.

Over the years, Mr. Christopher has worked on numerous projects and played a key role in developing some of the rules and regulations that govern the sport in the state. Despite some of the racing industry's struggles over the past decade, Mr. Christopher has always maintained a positive attitude, pointing out the contributions the industry makes to the agricultural community.

Racing Commissioner Christine White stated the following:

"Kenn's enthusiasm and knowledge of the horse racing industry has been a valuable asset not only to our office but also to Michigan's industry for over 30 years. Although we will miss him, the ORC wishes Kenn all the best."

Former Deputy Racing Commissioner Tom Dorsey, a long time friend of Mr. Christopher, who worked with him both at Detroit Race Course and at the ORC said:

"The one thing I told every commissioner I worked with was to let Kenn review any announcements that went out of the office. He would catch things that no one else did. He has always been very dedicated to the industry, and it will be impossible to replace a guy who can do all that he does."

Mr. Dorsey noted that Mr. Christopher started as an usher at DRC in the early 1970s and rapidly progressed from there into an assistant to Earl Flora, the publicist at DRC, before being hired by the ORC to help the industry as a whole.

The sport of horse racing has some exciting developments in the works, with a new thoroughbred track being opened in Huron Township this summer, and with all of the tracks working with the ORC to find ways to better market and promote the industry in the coming decade. Mr. Christopher has made valuable contributions to the industry over the years by pointing out the common interests everyone has in its overall success, and helping to keep things in a proper historical context.

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INDIANA/OHIO CASINO UPDATE

Indiana - In an effort to compete with the Four Winds Casino Resort in nearby New Buffalo, Michigan, the Blue Chip Casino in Michigan City, Indiana is continuing work on its new 22-story hotel and convention center. When completed, the new hotel and conference center will contain 302 guest rooms, a 10,000 square foot spa, a fitness center, and a 25,000 foot convention center which can provide seating for up to 1,200. The project, which will cost approximately \$130 million, is expected to be completed in December.

The Blue Chip Casino has experienced a 25% drop in attendance since the opening of the Four Winds Casino Resort last year.

Ohio -Lakes Entertainment, Inc., which manages the Four Winds Casino Resort and has management agreements in place with several other Native American Tribes, has announced that it is partnering with the organization MyOhioNow.com LLC (“MyOhioNow”) to develop a \$600 million casino resort complex in Clinton County, Ohio. The Ohio casino development is contingent upon the state’s voters approving a referendum on the November 4, 2008 ballot. MyOhioNow is in the process of collecting the 402,225 signatures required to place the referendum on the ballot.

Assuming all state regulatory approvals are obtained, the development plan calls for groundbreaking on the new casino complex to begin 12-18 months after the referendum passes, with the casino opening 18 months after construction has begun. According to MyOhioNow, the proposed casino project will create up to 5,000 jobs, and generate \$200 million in tax revenue which would be split among all 88 Ohio counties on a per capita basis.