



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAR 07 2002

Honorable Mike Foster
Governor of Louisiana
State Capitol
Baton Rouge, Louisiana 70804-9004

Dear Governor Foster:

On January 19, 2002, we received the Tribal-State Compact (Compact) between the State of Louisiana (State) and the Jena Band of Choctaw Indians (Band). The Compact was executed on January 17, 2002. For the following reasons, the Compact is hereby disapproved.

Section 12(C)(2) of the Compact requires the Band to make a 15.5% quarterly contribution of the Band's net revenues from the conduct of Class III gaming to the Support Education in Louisiana First fund (SELF) for the duration of the Compact (seven years) in express recognition and consideration of the substantial economic benefits accruing to the Band as a result of the State's agreement and effort to enable the Band to conduct Class III gaming activities on a property located in Vinton, Louisiana.

The Department has approved more than 200 tribal-state compacts to date. Only a few have called for tribal payments to States other than for direct expenses to defray the costs of regulating a gaming activity under the compact. The Department has sharply limited the circumstances under which Indian tribes can make direct payments to a State for purposes other than defraying the costs of regulating Class III gaming activities. To date, the Department has approved payments to a State only when the State has agreed to provide substantial exclusivity for Indian gaming, *i.e.*, where a compact provides a tribe with substantial economic benefits in the form of a right to conduct class III gaming activities in the State that are on more favorable terms than any rights of non-Indians to conduct similar gaming activities in the State. The payment to the State must be appropriate in light of the exclusivity rights conferred on the tribe. Otherwise, the payment would violate Congress' intent set forth in Section 2704(d)(4) of the Indian Gaming Regulatory Act (IGRA), which provides that nothing in IGRA "shall be interpreted as conferring upon the State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe..." 25 U.S.C. § 2710(d)(4).

In exchange for the Band's quarterly payments of 15.5% of net revenues, the State undertakes, under Section 13 of the Compact, to (a) support the Band's acquisition of the Vinton site in trust for gaming purposes; (b) support, in writing, the Band's request for designation and proclamation of the Vinton site as its initial reservation; (c) assist the Band in securing local government support for the trust application; (d) assist the Band in evaluating and responding to public comments regarding the Band's application; and (e) intervene in or participate as amicus curiae in any lawsuit challenging Federal and State required approvals for gaming to occur on the Vinton site.

It is true that the location of the Band's gaming establishment in Vinton, Louisiana, would likely yield substantial economic benefits to the Band. However, the State does not have the authority to either have the land taken into trust, or to have the land declared part of the Band's initial reservation. Both decisions are vested with the Secretary of the Interior. The State is merely offering its support to the Band in the process. In our view, the intangible value of the State's support for the Band's application to take land in trust in Vinton, Louisiana, and have the parcel declared part of the Band's initial reservation for purposes of Section 20 of IGRA, is not the type of quantifiable economic benefit that would justify our approval of the revenue-sharing payments proposed under this Compact.

The Band also argues, in the alternative, that the 15.5% quarterly revenue-sharing payments into the SELF fund are donations to a charitable organization permissible pursuant to 25 U.S.C. § 2710(b)(2)(B) of IGRA. The Band's argument focuses on an analysis of the Internal Revenue Service's treatment of contributions by individuals to the SELF fund, *i.e.*, the IRS allows deductions for contributions to State education cooperative(s) established by a State to serve school districts. *See* IRS Priv. Ltr. Rul. 93-40-038 (Oct. 8, 1993).

In a few instances, the Department has approved compact provisions requiring donations to charitable organizations. Generally, the provision includes a unilateral, benevolent, and gratuitous payment, and is not a condition for negotiation of the compact or bargained-for consideration. In these instances, the tribe maintained considerable discretion as to the charities to which it will make donations, establishing evidence that the donation is voluntary. Finally, the amount of the donation was usually a very small percentage of net revenue and did not threaten the profitability of the gaming establishment.

In our view, the 15.5% quarterly payment into the SELF fund is not a charitable donation, but a tax, fee, charge, or other assessment prohibited under IGRA. It is clear that Section 12(C)(2) of the Compact sets out what was intended to be only a revenue-sharing plan in exchange for some economic benefit to the Band, a clear indication that there is nothing unilateral, benevolent, or gratuitous in the Band's required payment.

Also, under Louisiana law, riverboat casino gaming operations are assessed certain fees. R.S. 27:91. Some of these fees are paid into the SELF fund. R.S. 17:421.7. The State of Louisiana considers the monies paid into the SELF fund to be "franchise fees." R.S. 27:92. We cannot accept an argument that money paid into the SELF fund by the riverboats are state-imposed franchise fees, whereas money paid into the same SELF fund by the Band are

"donations to a charitable organization." We are not persuaded that Congress intended "donations to charitable organizations" to include payments to a State under a compact, thus providing a potential loophole to IGRA's prohibition on the assessment of any tax, fee, charge, or assessment by the State.

These factors alone are sufficient to disapprove the Compact. It is for another day for the Department to consider the Band's request for an initial reservation proclamation. However, with the information before us, we have some concerns with an initial reservation located over 150 miles from the Band's traditional service area.

We regret that our decision could not be more favorable at this time.



Assistant Secretary - Indian Affairs

Enclosure

**Similar Letter Sent to: Honorable B. Cheryl Smith
 Tribal Chief
 Jena Band of Choctaw Indians
 P.O. Box 14
 Jena, Louisiana 71342-0014**

**cc: Eastern Region Office
 Office of the Field Solicitor - Tulsa**