

Court of Appeals affirms governor's ability to sign gaming compacts with Oregon Tribes

By Dean Rhodes

Smoke Signals editor

The Oregon Court of Appeals ruled Thursday, Nov. 14, that the Oregon Legislature authorized the governor to enter into agreements with Tribes to ensure that the state does not infringe on Tribal rights granted under federal laws, such as the Indian Gaming Regulatory Act.

The ruling came in response to a lawsuit that started in December 2003 when four Florence residents – Susan Dewberry, Carol Holcombe, Suzanne Danielson and Arnold Buchman – argued that Gov. John Kitzhaber did not have the constitutional authority to enter into a gaming compact with the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

"We are very pleased with the decision," said Senior Assistant Attorney General Stephanie Striffler, who is also the state Department of Justice's Native Affairs coordinator. "We've been at this litigation for 10 years and it is gratifying to see the Court of Appeals agree with our view of state law that the governor can enter into gaming compacts with Tribes."

In 2002, the Coos, Lower Umpqua and Siuslaw Indians began negotiating a gaming compact with Kitzhaber to authorize casino-style gaming on a 98-acre parcel of land in Florence that lies within the former Siletz Reservation, from which the Tribe was removed in 1862.

In 1998, the Secretary of the Interior acquired the land in trust for the Tribe and a subsequent federal district court ruling supported the secretary's decision that the property constituted restored lands under the Indian Gaming Regulatory Act. The act prohibits gaming on Indian lands acquired after Oct. 17, 1988, unless they are restored lands.

In February 2003, the Bureau of Indian Affairs approved the Tribal-state compact and Three Rivers Casino & Hotel opened in the summer of 2004.

Meanwhile, the four Florence residents attempting to halt the casino's development sought a ruling in September 2003 against Gov. Ted Kulongoski, who supported Kitzhaber's compact, from the Oregon Supreme Court to stop further development of the casino. The Supreme Court denied that request in November 2003.

The next month, the residents petitioned Lane County Circuit Court, which dismissed their request in early 2004. They appealed the circuit court decision, but the Oregon Court of Appeals held off hearing the case while they filed another complaint under the Oregon Declaratory Judgment Act in March 2004. The second case was moved from Lane County Circuit Court to U.S. District Court for the District of Oregon.

The District Court eventually



File photo

Three Rivers Casino, owned by the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, is located in Florence, Ore.

ruled that the four residents lacked standing because their alleged injuries were not sufficiently "concrete or particularized."

After losing in U.S. District Court, the residents returned to their original challenge to the gaming compact with the Oregon Court of Appeals, which ruled that Lane County Circuit Court Judge Karsten Rasmussen erred in dismissing their first petition.

On return to Lane County Circuit Court, the Tribe was allowed to intervene after waiving its sovereign immunity. Almost every other Oregon Tribe, including the Confederated Tribes of Grand Ronde, filed friend of the court briefs, supporting the Coos, Lower Umpqua and Siuslaw Tribe and the state.

In 2010, Rasmussen ruled in favor of the state and Tribe. He said in a 27-page opinion that federal law allows Tribal casinos in states that allow other entities to operate games of chance, as long as the state and Tribes negotiate a gaming compact.

Rasmussen's ruling then took the case back to the Oregon Court of Appeals.

On Nov. 14, a three-judge Court of Appeals panel ruled that the Indian Gaming Regulatory Act is a "comprehensive federal statutory scheme for the regulation of gaming on Indian lands that preempts the application of state gaming laws."

In addition, the Court of Appeals rejected the contention that the power to enter in to a Tribal-state compact rests only with the Legislature.

"We conclude that ORS 190.110, which addresses agreements by the state and local governments with American Indian Tribes, provides the governor with statutory authority to enter into a variety of agreements on behalf of the state," Judge Lynn Nakamoto wrote in her opinion.

"We do not find persuasive (the) suggestion that the Legislature's omission of one specific federal statute under which Indian Tribes have rights and privileges ought to bear significant weight in the textual analysis of ORS 190.110, which is broadly written and which contains no reference to specific federal statutes."

The Appeals Court panel also rejected several other arguments, including a contention that the

Legislature's statutory delegation of authority to the governor to cooperate and negotiate with Indian Tribes is an abdication of its legislative function, in violation of the separation of powers clause of the Oregon Constitution.

"We conclude that there is no clear separation-of-powers violation," Nakamoto wrote. "Assuming that casino gambling policy is a legislative function, the Legislature has set that policy in Oregon, allowing limited casino-style gaming. In accordance with governing federal law concerning the Tribes' rights

to conduct gaming on their lands under IGRA, Oregon's legislative policy undergirded the governor's entry into negotiations and the final gaming compact with the Tribes. ... The governor did not violate the 'underlying principle that separation of powers seek to avoid the potential for concentration of separate powers' in one branch."

Ultimately, Nakamoto wrote, "The trial court correctly concluded that the governor acted lawfully ... in negotiating and entering into the Tribal-state compact with the Tribes."

The four residents' attorney, Kristian Roggendorf of Lake Oswego, said he was not sure if they plan on appealing the decision to the Oregon Supreme Court.

"We're very pleased the Oregon Court of Appeals decided the case in their favor and upheld the governor's authority to negotiate and enter into gaming compacts," said Grand Ronde Tribal Attorney Rob Greene. "This decision helps protect the substantial benefits Tribal casinos have made to reservation economies, as well as local and statewide economies." ■

Conference room construction



Photos by Michelle Alaimo

Andrew Whisler, foreman for Whisler Construction, works on the framing for the expansion of Tribal Council's conference room in the Governance Center on Wednesday, Nov. 20. The expansion will almost double the size of the room and should be complete by the end of December. The extra space will accommodate more people, enabling Tribal Council to bring more visitors to meet with and educate them about the Tribe.



During construction two 30th Restoration coins, one showing the front and one showing the back of the coin, were placed in the new foundation. The coins will be covered by flooring so in the future if or when more construction is done, the coins will be discovered, sort of like a time capsule.