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December 19, 1991

ATTORNEY GENERAL OPINION NO. 91- 160

The Honorable Clyde D. Graeber
State Representative, Forty-First District
2400 Kingman
Leavenworth, Kansas 66048-4230

Re: Constitution of the State of
Kansas--Miscellaneous--Lotteries; Indian Gaming
Regulatory Act; Gaming on Lands Acquired After
October 17, 1988

Synopsis: 25 U.S.C. § 2719 authorizes use of land acquired in
trust for an Indian tribe outside the tribe's
existing reservation for tribal gaming purposes if,
upon consultation with the tribe and state and
local officials, the secretary of the interior and
the state governor determine that locating a gaming
establishment on such lands would be in the best
interests of the tribe and would not be detrimental
to the community surrounding the proposed site.
Cited herein: 25 U.S.C. §§ 465-467, 468, 2703,
2710, 2719.

* * *

Dear Representative Graeber:

You seek our opinion regarding the Indian gaming regulatory
act, 25 U.S.C. §§ 2701 et seq. Specifically you inquire
whether lands given to an Indian tribe become part of that
tribe's reservation and thus eligible for establishment of a
class III gaming parlor or casino.

The Indian gaming regulatory act (IGRA) authorizes the conduct of class III gaming activities by tribes "on Indian lands" under certain circumstances and pursuant to a tribal/state compact. 25 U.S.C. § 2710(d)(1). The term "Indian lands" is defined as:

"(A) all lands within the limits of any Indian reservation; and

"(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." 25 U.S.C. § 2703(4).

The tribe must have jurisdiction over the land sought to be used. 25 U.S.C. § 2710(d)(1)(A)(ii) and (b).

However, the IGRA specifically contemplates use of lands outside the reservation acquired by the secretary of the interior in trust for a tribe after the effective date of the act for conduct of gaming when:

"(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

"(B) lands are taken into trust as part of--

"(i) a settlement of a land claim,

"(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

"(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1).

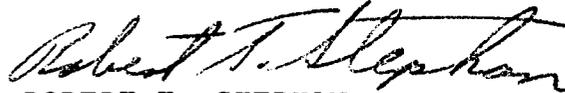
Legislative history provides the following interpretation of 25 U.S.C. § 2719:

"Gaming on newly acquired tribal lands outside of reservations is not generally permitted unless the Secretary determines that gaming would be in the tribe's best interest and would not be detrimental to the local community and the Governor of the affected State concurs in that determination." S.Rep.No. 100-446, 100th Cong., 2nd Sess. 5, reprinted in 1988 U.S. Code. Cong. & Ad. News 3071, 3078. See also Texas Attorney General Opinion No. DM-32 (Aug. 6, 1991).

25 U.S.C. § 465 further defines the method for acquiring new lands for the benefit of Indian tribes. See also 25 U.S.C. §§ 467, 468.

Thus, 25 U.S.C. § 2719 authorizes use of land acquired in trust for an Indian tribe outside the tribe's existing reservation for tribal gaming purposes if, upon consultation with the tribe and state and local officials, the secretary of the interior and the state governor determine that locating a gaming establishment on such lands would be in the best interests of the tribe and would not be detrimental to the community surrounding the proposed site. This opinion does not address the question of whether the United States Congress has authority to determine which branch of state government may make the determination required by 25 U.S.C. § 2719(b)(1)(A).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General