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NM Urges Judge To Deny Tribe's TRO Over Gambling Pact

By **Matthew Perlman**

Law360, New York (October 1, 2015, 7:32 PM ET) -- The state of New Mexico on Thursday urged the federal judge overseeing a case brought by the Pueblo of Pojoaque over the need for a new gaming compact to deny the tribe's request for a temporary restraining order, saying it's unnecessary and that the suit should be dismissed.

In a memorandum in opposition to the tribe's request, the state argued that it had not sent third-party casino vendors letters warning against working with the Pueblo, as the tribe asserted in its TRO request and its attempt to expedite the proceedings. New Mexico said the tribe was in fact damaging itself by continuing to operate the casino after its previous compact expired.

"In addition to the fact that the state of New Mexico has not taken any action to restrict the Pueblo's activities and has not contemplated action against those conducting gaming business with the Pueblo, even had the state done so, any alleged harm suffered by the Pueblo is due to its own actions," the memorandum said.

The state said that its lack of action against the Pueblo precludes the tribe from proving the TRO is needed to prevent irreparable harm. Its memorandum also said that the tribe could not show that a restraining order would serve the public interest because the public interest is best served by the regulation of gambling activities.

"The public's interest, as reflected in the legislatively stated policy of the [state's Gaming Control Act], is in strict regulation of gaming activities in order to prevent criminal and corruptive elements and influences in the gaming industry," the opposition said.

The tribe's compact with New Mexico expired on June 30, but it **reached an agreement** with the U.S. attorney's office for the District of New Mexico to continue operating its Buffalo Thunder Resort & Casino and Cities of Gold Casino Hotel under the same terms as its previous gambling compact from 2001.

The Pueblo **sued in July to force** New Mexico to strike a new compact for its casinos, seeking hundreds of millions of dollars in damages and accusing the state of failing to negotiate in good faith.

According to the Pueblo, the state has demanded an improper tax on its gross gambling revenue and attempted to shoehorn provisions into the compact that aren't directly related to Class III gambling, among other alleged demands that violate the Indian Gaming Regulatory Act and the tribe's sovereignty.

The tribe **filed for a TRO** in late September, saying that New Mexico had sent letters to vendors that provide its casinos with gaming equipment and services. The letters asserted that the tribe was conducting illegal gaming operations, informed the vendors that they would be audited, and demanded copies of all communications and business records related to their dealings with the Pueblo, the tribe said. It followed up with a request to expedite a hearing on its TRO.

New Mexico contends that not only should the TRO request be denied — in part because it never sent the letters described the tribe — but that the suit should be dismissed altogether.

In its memorandum in opposition, the state said the suit contained no basis for federal jurisdiction since its claims allege a failure to negotiate in good faith, which arises under New Mexico law.

The state also said the Pueblo asserted federal jurisdiction based on the Indian Gaming Regulatory Act. The state, however, enjoys immunity in federal court through the Eleventh Amendment, it said.

“IGRA cannot confer federal jurisdiction over a state that does not consent to be sued,” New Mexico wrote.

A hearing on the TRO is set for Friday.

The Pueblo of Pojoaque are represented by Carrie A. Frias of the Pueblo of Pojoaque Legal Department, Scott Crowell of Crowell Law Offices Tribal Advocacy Group and Steffani A. Cochran.

New Mexico is being represented by Jerry A. Walz of Walz and Associates PC.

The case is Pueblo of Pojoaque, et al. v. State of New Mexico et al., case number 1:15-cv-00625, in the U.S. District Court for the District of New Mexico.

--Additional reporting by Caroline Simson, Lance Duroni and Matt Sharp. Editing by Philip Shea.

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