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New Mexico tribe appeals ruling on casino dispute with state

By DAN ELLIOTT - Associated Press - Monday, September 28, 2015

DENVER (AP) - Lawyers for an American Indian community in New Mexico asked a federal appeals court on Monday to overturn a lower court ruling that blocked them from going through the U.S. Interior Department instead of the state for a gambling compact.

Attorneys for Pojoaque Pueblo told the Denver-based 10th Circuit Court of Appeals that the state didn't negotiate in good faith when they tried to draw up a new compact.

"Congress did not intend for states to be able to negotiate with impunity," Pojoaque Pueblo attorney Scott Crowell said after a hearing before a three-judge panel of the court.

Eric Miller, arguing for the state, said New Mexico has important sovereignty rights at stake.

He said New Mexico has "a right to ensure within the state of New Mexico that gambling takes place only on terms agreed to by the state of New Mexico."

The appeals court didn't say when it would rule.

The courtroom gallery was packed for the brief oral arguments, and some spectators carried fans that said "Pueblo of Pojoaque" on one side and "Making New Mexico Better" on the other.

Under federal law, tribes must have compacts with the state if they want to operate casinos. The pueblo tried to negotiate a new compact with the federal government after talks with the state broke down in 2013.

Pojoaque sought a new compact that would lower the gambling age from 21 to 18. It would

also allow alcohol on the casino floor and end revenue sharing with the state, among other things.

Negotiators for Gov. Susana Martinez's administration argued those provisions would hurt attempts to create a more socially responsible system.

State officials have denied Pojoaque's claims that they ignored provisions of the federal Indian Gaming Regulatory Act for settling disputes. They noted that large and small tribes signed on to new agreements this year following years of negotiations.

Pojoaque's gambling agreement with New Mexico expired in June. The community's slot machines and gambling tables north of Santa Fe are still operating under an agreement with the U.S. attorney's office in New Mexico pending the outcome of the appeal.

The pueblo continues to regulate its two casinos under provisions of the expired compact, and revenue-sharing payments are being deposited into an account overseen by an independent trustee, according to Pueblo Gov. Joseph Talachy.

The tribe pays the state between \$4.5 million and \$6 million a year. Talachy has said a higher percentage called for in the new compacts amounted to an illegal tax.

Pojoaque was required to share 8 percent of its net winnings under the expired agreement. According to filings with the Gaming Control Board, the tribe reported net winnings of more than \$60.7 million in 2014.

Associated Press Writer Susan Montoya Bryan in Albuquerque contributed to this report.

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