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Tribal Victory in Texas

The National Indian Gaming Commission has approved Class II gaming ordinances for the Alabama-Coushatta Reservation in East Texas and the Ysleta del Sur Pueblo near El Paso in far West Texas. The third federally recognized tribe in Texas, the Traditional Kickapoo, had already beaten back efforts by the state of Texas to shut down the Lucky Eagle Casino, located on the Kickapoo Reservation outside of Eagle Pass on the Mexican border.

None of the three Texas tribes is numerous or wealthy, but they have all been engaged in legal battles off and on since Texas Governor Ann Richards determined not to negotiate a gaming compact in 1992. Under Governor George W. Bush, Texas filed suit to shut down Indian gaming in 1999.

The Kickapoo managed to avoid the Texas offensive, but the Alabama-Coushattas and the Tiguas at Ysleta del Sur had been abandoned to state jurisdiction. When Congress reestablished federal recognition in 1987, the Texas delegation got an anti-gaming clause inserted in the Restoration Act. At that time, all gambling was unlawful in Texas except charitable bingo by local option.

Later the same year, Texas started legalizing gambling on a statewide level. Last year, Texas sold \$4.4 billion in lottery tickets and there was \$438 million wagered at Texas racetracks. This leaves aside the common practice of county authorities looking the other way for “10 liners” in bars across the state.



The least trivial Indian gaming in Texas was the Speaking Rock Casino operated by the Ysleta del Sur Pueblo, because of the proximity of Tigua lands to traffic on Interstate 10. Ironically, Ysleta del Sur is also the only one of the three Texas tribes indigenous to their current location.

The Traditional Kickapoo got their reservation with borrowed money in 1985, having been federally recognized in 1983 as migrant workers living under the international bridge at Eagle Pass.

The Alabamas got their reservation in 1854, where the Coushattas joined them in 1858. Texas did not oppose these grants because the tribes had helped the mass movement of refugees in front of the Mexican army during the Texas Revolution known as the “Runaway Scrape.”

The Tiguas entered Texas with the Spanish fleeing the Pueblo Rebellion of 1680. The pueblo was established in 1682 and received a land grant from the Spanish king in 1751. While Indians do not agree that the Spanish king had any title to grant, the legal fact is that Texas land titles generally date to Spanish land grants so it’s unclear why that one would differ because it was granted to Indians.



The important fact to the Tiguas is that they were here in their current location long before Texas existed, and they have waged a nonviolent guerilla war of litigation and changing the facts on the ground since they were ordered to shut down Speaking Rock by a federal court in 2001. The court was bound by an opinion of the Fifth Circuit Court of Appeals in 1994 that the Restoration Act trumped the Indian Gaming Regulatory Act.

The National Indian Gaming Commission, however, was not a party to that lawsuit, and they are charged with interpreting IGRA. They have now decided—Fifth Circuit to the contrary—that IGRA applies to the Tiguas and the Alabama-Coushattas, based on a legal opinion from the Office of the Solicitor in the Department of the Interior.

Is this the end of the battle between the tribal Davids and the Texas Goliath? If history is any indication, the Republican state government in Texas will continue the battle at least long enough to see the outcome of the 2016 elections, after which a new Republican administration might be expected to rein in the Department of the Interior.

For now, Texas Indians celebrate a rare victory over one of the least Indian friendly states in the nation.

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