



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Wash. Tribe Says DOI, NIGC Wrongly Blocked Gaming Plans

By **Andrew Westney**

Law360, New York (November 16, 2015, 10:19 PM ET) -- A Native American community hit the federal government with a complaint in Washington federal court on Friday, alleging the Interior Department and the National Indian Gaming Commission misapplied federal law in rejecting the tribe's bid to conduct gaming on its lands.

Frank's Landing Indian Community is seeking a declaration that the DOI's Bureau of Indian Affairs and the NIGC wrongly denied approval for the community's proposed ordinance governing Class II gaming on the grounds that the community did not qualify as an Indian tribe under the Indian Gaming Regulatory Act.

The DOI based its decision on the fact that the community isn't on the department's list of federally recognized tribes that was established by a 1994 law, but should have relied instead on the separate standards for Indian tribes set by IGRA, the community said.

"Because the community exercises powers of self-government and is eligible for services provided to Indians due to their status as Indians and because the Secretary has actually provided those services to the community, and because Congress has expressly recognized and confirmed the community's sovereign powers and authority, the community qualifies as an 'Indian tribe' under IGRA," the community said.

Frank's Landing Indian Community is a federally recognized, self-governing dependent Indian community on trust lands along the Nisqually River near Olympia, Washington, according to the complaint.

In 2014, the community's governing council adopted an ordinance to conduct Class II gaming, which includes bingo and poker, on its lands, and submitted the ordinance for approval by the NIGC.

In March, Assistant Secretary for Indian Affairs Kevin K. Washburn issued an opinion to the NIGC that the community didn't qualify as an Indian tribe for the purposes of IGRA because it wasn't eligible to appear on the agency's annual list of federally recognized Indian tribes. The NIGC told the community in a letter the same day that it wouldn't review the proposed gaming ordinance, saying it wasn't a tribal ordinance because the community wasn't a federally recognized tribe, according to the complaint.

Washburn refused to reconsider his ruling in late October, the community said.

However, Congress had expressly recognized the community in the 1994 Frank's Landing Recognition Act, the community argued. And while that law prohibited the community from conducting Class III, casino-style gaming, Congress "rejected broader language that would have prohibited the community from engaging in all forms of gaming under IGRA," according to the complaint.

The BIA wrongly ruled that the community couldn't be considered an Indian tribe under IGRA because it wasn't on the list of federally recognized tribes published by DOI under the 1994 Tribal List Act, the community said. Congress established different criteria for tribes under IGRA that the community does meet, according to the complaint.

The DOI declined to comment on the case Monday.

Representatives for the community and the NIGC were not immediately available for comment Monday.

Frank's Landing Indian Community is represented by Scott Crowell of Tribal Advocacy Group LLP.

Counsel information for the federal government was not immediately available.

The case is Frank's Landing Indian Community v. National Indian Gaming Commission et al., case number 3:15-cv-05828, in the U.S. District Court for the Western District of Washington.

--Editing by Aaron Pelc.

All Content © 2003-2015, Portfolio Media, Inc.