

The Boston Globe

Metro

State files lawsuit to block Martha's Vineyard casino

Says Aquinnah ceded rights in 1983 Vineyard land deal

By **Mark Arsenault** | GLOBE STAFF DECEMBER 02, 2013



DAVID L. RYAN/GLOBE STAFF

The tribe said it received federal approvals to convert an unfinished community center (right) into a gambling hall.

Governor Deval Patrick's administration filed suit in state court Monday to block the Wampanoag Tribe of Aquinnah from opening a small casino on tribal land on the western edge of Martha's Vineyard, the renowned resort island and presidential vacation spot.

The lawsuit, filed before a single justice of the Supreme Judicial Court, comes three weeks after the tribe threw a curveball into the state's unsettled gambling industry by announcing it had received all necessary federal approvals to convert an unfinished tribal community center into a temporary gambling hall and would do so "as soon as possible."

State officials insist the Aquinnah cannot host blackjack on the island.

"We have a genuine difference of legal opinion, and that needs to be sorted out by a court, and this is how you do that," Patrick told the Globe in an interview Monday in a State House elevator. "I don't have a position on the substance [of a Vineyard casino]. I have a position on what the law provides."

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Last month, the Aquinnah produced two legal analyses from federal agencies that suggested the tribe has the right to host gambling on its sovereign land.

Patrick's lawsuit insists otherwise, saying the tribe long ago gave up that right.

"The Aquinnah tribe may do as it wishes, so long as it acts consistently with state and local law," the 16-page lawsuit states. "What the Aquinnah Tribe may not do, however, is operate a gaming . . . establishment on its lands."

Meanwhile, on the mainland, where the state's gambling industry is emerging with the twists of a soap opera, another casino drama is unfolding this week. The fate of a \$1 billion Revere casino bid will be on the line Tuesday, when the state gambling

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commission considers whether Mohegan Sun may legally apply for a casino license on land leased from Suffolk Downs.

Suffolk Downs lost an East Boston casino referendum on Nov. 5, the same day Revere voters approved it.

The commission must decide if the Revere vote constitutes a legal endorsement of the new Mohegan Sun plans. There is not time under current deadlines for a new vote.

Mohegan Sun chief executive Mitchell Etes promised at a press conference Monday to build a Revere casino that would “redefine how people in the region entertain themselves.”

The Revere City Council on Monday voted 9 to 0 to approve a resolution affirming their support of a casino. The resolution came after a council hearing on zoning changes required for the development, before a large crowd of mostly casino backers. “I represent the elderly of Revere, who have been waiting a long time for this casino,” said Rose Napolitano, a senior citizen, addressing the council. “We don’t have much time left, so get it on.”

But Elaine Anzalotti urged councilors to consider the possible effects on the Beachmont neighborhood, where the development would be located. “I’ll be hearing traffic 24 hours per day,” she said. “Everyone here who wants it, why don’t you live where I live, and I’ll live where you live?”

Out on the island known as a presidential playground, the Aquinnah Tribe has waged a long battle with state officials over tribal gambling rights.

The governor’s just-filed suit against the tribe touches a complicated intersection of state and federal law. Tribal gambling is approved and regulated under federal law, the 1988 Indian Gaming Regulatory Act, known as IGRA. Federally recognized tribes, such as the Aquinnah, can generally host gambling without a state license.

But Massachusetts officials have long said the Aquinnah gave up their federal casino rights in a 1983 settlement deal that resolved a lawsuit brought by the tribe. In the settlement, crafted after nine years of litigation, the island town of Aquinnah and its taxpayers' association conveyed more than 400 acres of land to the tribe, the lawsuit states. "In return, the Aquinnah Tribe agreed that those lands would remain subject to the Commonwealth's . . . laws and jurisdiction," according to the suit.

Under state law, the only way to open a casino is to win a license from the state gambling commission. The Aquinnah have not applied for a state license.

Patrick asked the court to declare "that the Aquinnah Tribe has no right to license, open, or operate a gaming establishment on the settlement lands without complying with all laws of the Commonwealth."

The tribe, however, has long argued it could not have surrendered federal gambling rights in a 1983 settlement if those rights did not exist until 1988, when Congress approved the tribal gambling act.

The tribe asked the federal government to clarify its rights, and in November unveiled a new legal analysis from Eric Shepard, acting general counsel of the National Indian Gaming Commission, the federal agency that oversees tribal gambling.

"It is my opinion that the specified lands [on the Vineyard] are Indian lands as defined by IGRA and are eligible for gaming," Shepard wrote to the tribe, according to the five-page letter, dated Oct. 25.

The tribe has also produced an 18-page legal analysis from the US Department of the Interior's office of the solicitor, dated Aug. 23, which also concluded that the tribe's land qualifies under the Indian Gaming Regulatory Act to host gambling.

The tribe insisted in November it has all necessary federal approvals to immediately open what US tribal gambling law calls a Class 2 facility, which could offer games such as high-stakes bingo, poker, and certain varieties of slot machines. To run a wider

variety of games, the tribe must negotiate with Patrick on an agreement known as a compact. Compacts provide tribes certain benefits in exchange for giving the state a share of gambling revenue. The Aquinnah have formally asked to open negotiations.

The Aquinnah are a separate tribal government from the Mashpee Wampanoag, who are seeking federal approval to build a casino in Taunton.

An Aquinnah spokesperson could not be reached for comment Monday evening.

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