

U.S. Supreme Court Rejects Rincon Ruling Appeal

Next >>

28 Jun, 2011 / *GamblingCompliance* / **Tony Batt**

The United States Supreme Court on Monday rejected California's appeal of an Indian gaming ruling which could fundamentally change the way states negotiate gambling compacts with tribes.

The court's denial of certiorari, which was issued without comment, **restricts California's methods of collecting and spending money from Indian casinos** and other tribal gaming operations.

"This means that the days when states could negotiate compacts to solve their financial problems on the backs of tribes is over," said Scott Crowell, the attorney general for the Rincon Band of Luiseno Indians.

The Rincon tribe claimed former Republican Governor Arnold Schwarzenegger violated the federal Indian Gaming Regulatory Act of 1988 by demanding a tax on revenue from additional slot machines during compact negotiations.

The demands infringed on tribal sovereignty and were evidence of bad faith, the tribe argued.

By refusing to hear the case, the Supreme Court essentially upheld **a 2-1 decision for the Rincon tribe** on April 20, 2010 by the 9th U.S. Circuit Court of Appeals.

"This is an opportunity to set a new course for negotiations between the tribes and the state: one that is not divisive politically, but demonstrates how a governor with vision can create a partnership between both governments," the Rincon Band's tribal chairman Bo Mazzetti said in a news release.

The Supreme Court's ruling sends the case back to San Diego where a federal district court will oversee negotiations between the Rincon tribe and representatives of new Democratic Governor Jerry Brown of California.

"We respect the court's decision and will proceed with negotiations that further the interests of the people of California and the state's tribes," said Brown spokesman Evan Westrup.

If an agreement is not reached within 60 days, both sides will submit their last best offer to a court-appointed mediator. The mediator must choose the offer which is more compliant with IGRA.

"I have some trepidation about the negotiations because the architects of the Schwarzenegger policy are still in the Brown administration," Crowell said. "If they want to go down that path again, the discussions will be short."

A key factor in the Supreme Court's refusal may have been the Obama administration's support of the Rincon tribe.

In a May 24 brief requested by the Supreme Court, Interior Department Solicitor Hilary Tompkins recommended a denial of California's appeal.

Among other things, Tompkins argued the ruling by the 9th U.S. Circuit Court of Appeals is unlikely to impact other states.

Marc LeForestier, California's supervising deputy attorney general, disagreed in a June 6 supplemental brief and predicted a ruling for the Rincon tribe would complicate tribal-state negotiations across the country.

Tribal gaming observers tend to agree with LeForestier.

"Other states will look at this decision, and it gives tribes additional negotiating strength," said Tom Foley, a former vice chairman of the National Indian Gaming Commission.

Tribes are still unable to sue states for refusing to negotiate gaming compacts because of a landmark 1996 Supreme Court decision barring a lawsuit by the Seminole tribe against Florida.

But when states do agree to negotiate gaming compacts, tribes will have now more leverage because of the Rincon ruling, according to Eric Eberhard, an Indian law practitioner at the Seattle University School of Law.

Eberhard agreed with Joe Valandra, a former NIGC chief of staff, who said the Rincon decision "helped to restore balance to the negotiation table that was taken away in the Seminole case."

Yet California is different from most other states when it comes to Indian gaming.

California has waived its sovereign immunity from Indian gaming lawsuits, and the stakes are also higher as it affords Indian tribes exclusive rights to operate slot machines and most other casino games.

"Not all states will waive their Eleventh Amendment immunity from suit," said Phil Hogen, a former NIGC chairman.

The Rincon case should be a useful tool to negotiators of future Indian gaming compacts, according to University of North Dakota School of Law Dean Kathryn Rand.

"As a practical matter, it gives more authority to the 9th Circuit's approach to determining bad faith on the part of the state," Rand said.

"That's good news because it provides guidance to both tribes and states on compact negotiations and revenue sharing provisions."