

NY Oneida Agreement May Raise Eyebrows At Interior

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[Dave Palermo, Gambling Compliance](#)

A sweeping agreement that amends a casino compact between New York and the Oneida Indian Nation will likely be rejected by the Department of Interior because it also includes such non-gambling issues as taxes and land claims, according to Indian law experts.

The agreement reached last month by Governor Andrew Cuomo, the nation and Madison and Oneida counties extracts a 25 percent share of Oneida's gambling revenue and gives the tribe a ten-county exclusivity zone while settling land claims and allowing the nation to retain sales, use and occupancy taxes.

The Oneida package, coupled with recent settlement of revenue sharing disputes with the St. Regis Mohawk and [Seneca Indian nations](#), is integral to Cuomo's plan to amend the state constitution and bring as many as seven commercial casinos to upstate New York.

State legislators are expected to vote on Cuomo's proposal this week.

Under [Cuomo's plan](#) the three tribes, currently operating five casinos, would share revenue with the state in exchange for gambling exclusivity zones ranging from seven to ten counties.

The Mohawk and Seneca nations have had regional exclusivity and revenue sharing since they signed tribal-state compacts in 1999 and 2001, respectively. Oneida, which has had a compact since 1993, never agreed to a revenue share until its agreement with Cuomo.

But taxation and land claims components of the Oneida deal fly in the face of Indian Gaming Regulatory Act (IGRA) prohibitions and Interior policy against incorporating non-gambling issues as leverage in tribal-state casino compacts.

"If this agreement is presented to Interior as a gaming compact [amendment] it will be rejected," said George Skibine, a former Interior official and attorney with the Dentons law firm.

"I don't think there is any way Interior is going to approve it because it would create a precedent that would tell other states they are free to include treaty negotiations, fishing rights and other issues in a gaming compact.

"Interior has consistently rejected compacts that include these types of provisions," Skibine said, the latest being a proposed gambling agreement submitted last year

by the state of [Massachusetts and the Mashpee Wampanoag tribe](#).

The Wampanoag agreement was rejected by Interior in part because it included such non-gambling issues as hunting and fishing rights. A second, amended agreement was later approved.

Attorney Scott Crowell, who won a landmark 2010 federal court case limiting the ability of states to extract shares of tribal casino revenues, said the Oneida agreement benefits the tribe, “but the manner in which they put it all in one package is problematic.”

“Interior may say the parties will need to take the gaming portion out and submit a separate document as a compact, then have a separate agreement on the tax issues and the land claim.

“The agreement in its current form lumps it all together, which creates difficulty.”

Officials with Interior and the Bureau of Indian Affairs Office of Indian Gaming did not respond to requests for comments.

But Assistant Secretary of Indian Affairs Kevin Washburn, when asked in a 2012 interview with GamblingCompliance to which extent gambling compact negotiations should stray from the scope and regulation of gambling, replied: “Not very much.”

“States should not be able to use a gaming compact as a stalking horse to deal with tribal water rights or land claims,” said Washburn, who rejected the initial Wampanoag compact. “Congress did not authorize that.

“A gaming compact is supposed to be very much about gaming, primarily about gaming.”

Oneida spokesman Brett Stagnitti acknowledged “there would be changes to the compact” under the Cuomo-Oneida agreement, both in revenue sharing and the ability of the nation to operate Las Vegas-style slot machines.

He declined further comment.

Keller George, former Wolf Clan representative to the Oneida Nation Council, said the agreement would be submitted to Interior, “but not as a [tribal-state] compact.”

Skibine said if the agreement is not submitted to Interior as an amendment to the gambling compact it would be left to the National Indian Gaming Commission (NIGC), the federal regulatory agency, to determine whether the agreement violates IGRA.

“Whoever is representing them [Oneida] is going to tell them not to submit it to Interior as a compact amendment because Interior is going to have to reject it,” Skibine said.

In any event, a former high-ranking Interior official who asked not to be identified doubted the agreement in its current form will pass muster with federal officials.

“I’ve spoken to a number of people and we’ve all reached the same conclusion. Given the recent precedent at Interior there’s no way they can approve the Oneida agreement,” the former official said. “It directly references [Oneida compact] provisions.”

Crowell agreed.

“[The agreement] makes all the taxation and fee-to-trust and tribal jurisdiction issues part of the gaming compact,” he said.

The agreement ends decades of state and county litigation and allows Oneida to place up to 25,000 acres of land in Oneida and Madison counties into federal trust, exempting it from state and local taxes and regulations.

But Crowell and the former Interior official questioned whether a cap on acquiring land in trust violates federal law.

It also is not clear how the agreement can resolve ongoing lawsuits over the Oneida land claims by private citizens.

Settling tobacco and fuel tax issues is seen as a major achievement.

“You can’t underestimate the tax deals,” said John Tahsuda, principal in Navigators Global.

“They’re going to collect and keep their own taxes. That’s huge, both symbolically and economically.”

Crowell, lead attorney in a [landmark 9th Circuit Court of Appeals ruling](#) that prevented California Governor Arnold Schwarzenegger from extracting revenue sharing from the Rincon Band of Luiseño Indians, called the 25 percent revenue split “pretty high.”

But Crowell said Interior may justify the revenue share when considering the side agreements.

The former Interior official said it would be difficult for Interior to approve a 25 percent revenue share in a state with commercial casinos.