

Questions for Casino Hearing

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February 24, 2017 | 2017-R-0063

Issue

This report provides questions for a casino hearing and related information on the casino issue. (This is a companion report to OLR Report 2017-R-0062.)

Background

State law prohibits casino gambling (among other forms of gambling not at issue here). But despite the ban, the Mashantucket Pequot Tribe and the Mohegan Tribe, the state's two federally recognized Indian tribes, are able to legally operate casinos on their reservations under a federal law known as the Indian Gaming Regulatory Act (IGRA).

IGRA provides a framework for resolving jurisdictional, regulatory, and other legal issues involving gaming on federally recognized Indian reservations ([25 U.S.C. §§ 2701, et seq.](#)). Under specified circumstances, it allows casino gaming on such reservations under a negotiated tribal-state compact approved by the U.S. Department of the Interior. IGRA requires a mediation process to be used, under certain conditions, if compact negotiations are not successfully concluded.

Foxwoods Casino, which is owned and operated by the Mashantucket Pequots, operates under federal gaming procedures negotiated by the Interior secretary following IGRA's mediation process, after Connecticut refused to negotiate a compact with the tribe. Mohegan Sun Casino, which is owned and operated by the Mohegans, operates under a negotiated tribal-state compact. The gaming procedures and the compact have the full force and legal effect of federal law.

Because of an ongoing dispute between the state and the Mashantucket Pequots as to whether the tribe had a right under IGRA to operate slot machines, the federal procedures (§ 15a) imposed a moratorium (temporary ban) on slot machines until the issue was settled by (1) agreement between the state and the tribe, (2) a court, or (3) state law. The state claimed that the tribe could not operate slot machines because slot machines are prohibited under state law; the tribes claimed that the various types of games permitted under state law at the time, such as Las Vegas Night games, were sufficient to give the tribe the right under IGRA to have slot machines. (Las Vegas Night games have since been repealed.)

The dispute surrounding the operation of slot machines at the casino was resolved by a memorandum of understanding (MOU) between the state and the Mashantucket Pequots, signed on January 13, 1993, which suspended the moratorium. The MOU gave the tribe the exclusive right to operate slot machines in Connecticut in exchange for a monthly contribution to the state of 25% of its gross slot machine revenue (or 30% if the contribution falls below \$100 million in any year for a total of at least \$100 million).

The MOU was amended on April 25, 1994, allowing the Mohegans to execute its own memorandum with the state to operate slot machines under the same terms as the Mashantucket Pequots. The amendment modified the formula and expanded the scope of the original memorandum by conditioning the tribes' slot contribution to the state on the state not permitting others to operate casino games, instead of just slot machines. Under the amended memorandum, each tribe must contribute 25% of its gross slot machine revenue to the state monthly. If either tribe's contribution falls below \$80 million in any year, its rate increases to 30% to ensure a combined \$160 million minimum annual contribution. (The Interior Department has indicated that the payment does not violate IGRA, in that the tribes are "purchasing a valuable right from the State [and]. . . the tribal payment for this right is an operating cost"—letter to Mohegan Tribe, dated Dec. 5, 1994.)

2015 Gaming Legislation

In 2015, the Mohegans and the Mashantucket Pequots got legislative approval to search for an off-reservation casino site. But the casino cannot be built until state law legalizes casinos.

Specifically, the legislature created a process that allows the Mashantucket Pequots and the Mohegans, through a business entity owned exclusively by them (e.g. limited liability corporation) and registered with the secretary of the state, to issue a request for proposals (RFPs) and enter into a development agreement with a municipality to possibly establish an off-reservation casino ([SA 15-7](#)), which took effect upon

passage on June 19, 2015). The agreement, as well as the establishment of the casino, is contingent upon state law being changed to allow the tribes to operate an off-reservation casino. If a final court judgment finds any provision of the legislation invalid, unlawful, or unconstitutional, the remaining provisions are inoperative and have no legal effect.

Pursuant to the special act, the tribes jointly created MMCT Venture to find a site for the casino. MMCT received five RFPs from four municipalities (East Hartford, East Windsor, Hartford, and Windsor Locks) but later decided to reopen the bidding process and received five RFPs (East Hartford, East Windsor, Hartford, South Windsor, and Windsor Locks). MMCT is considering sites in two of these towns—East Windsor and Windsor Locks.

MGM Resorts International (MGM) Lawsuit

After the passage of [SA 15-7](#), MGM and the Schaghticoke Tribe, one of the Connecticut tribes seeking federal recognition, separately applied to the secretary of the state to establish a limited liability corporation pursuant to the special act. Both were denied. MGM and the tribe filed separate federal lawsuits claiming the legislation violated both the Equal Protection and Commerce clauses of the U.S. Constitution. In June 2015, a federal district court dismissed MGM's case on grounds that MGM did not adequately allege an injury, after which the tribe dropped its lawsuit. MGM appealed to the Second Circuit Court of Appeals, which heard arguments in November 2015 but has not yet issued a decision.

Questions for Mohegan and Mashantucket Pequot Tribal Officials

1. Some legislators have expressed frustration at the pace of the tribes' progress in selecting a casino site and a host municipality. Exactly where are you in the process? What has been slowing things down—lack of local support, legal issues, financing, or something else?
2. East Hartford, one of the early front runners to host the proposed casino, has been eliminated from contention. Why? Why are East Windsor and Windsor Locks better bets than East Hartford?
3. Initial reports suggested the proposed casino facility would rival the Springfield casino both in terms of its size and amenities. But the latest reports suggest a smaller facility offering slot machines, table games, and limited amenities. Is this the case? If yes, can you tell us why the plan was scaled down? What amenities will not be included?

4. The general perception is that MGM's Springfield casino is bad for Connecticut. But both tribes had submitted proposals to build casinos in Massachusetts. How would things have been different for the state if either tribe's casino proposal had been accepted? Would the tribes still be proposing an off-reservation casino in the I-91 corridor?
5. MGM's Springfield casino plan relies on drawing customers from Connecticut. When the tribes bid for a Massachusetts casino, did their plans rely on this as well?
6. The Connecticut attorney general has cautioned that granting the tribes exclusive rights to a commercial casino could violate the Commerce or Equal Protection clauses of the U.S. Constitution. Are the tribes willing to invest in building an off-reservation casino in the state before these issues are resolved?
7. According to published reports, Moody's Investors Service has indicated that the financial situation of the tribes is not the strongest, suggesting the tribes may not find it easy to raise capital for the facility. If this is the case, where will the tribes get the money to build a casino? How will the venture be financed?
8. The revenue generated by the tribal casinos has been falling steadily over the last 10 years. So if less money is being wagered, why does the state need another casino?
9. The amount the tribes have been contributing to the state under the MOU has been declining, reflecting a decline in the amount wagered on slot machines. Is this a sign of market saturation? If yes, how does building another casino solve this problem? If no, how do we know when the market is saturated? If not declining revenue, what are the signs of a saturated market?
10. How do the tribes respond to those who say the process created by the casino legislation has not been fair, open, transparent, or competitive?
11. How can you assure legislators that the state can grant the tribes exclusive rights to an off-reservation casino without endangering the revenue from the MOU or exposing the state to a potentially expensive and protracted lawsuit from those who, like MGM, claim that the legislation and process illegally favor the tribes?
12. How do you respond to critics of the casino proposal who say the deal is good for the tribes but not for the state? How does the casino plan benefit the state?

13. Published reports indicate that the tribes have been meeting with the governor on the casino project, but to date the governor has not publicly committed to a casino. Can you share with this committee the substance of those meetings? Does the fact that the governor has not publicly commented on the proposal worry you?
14. How receptive have residents of potential host towns been to the casino idea? What's the nature of the opposition that residents have raised? Do you have a sense of the source of the opposition, e.g., local businesses? Have any residents asked that the question be put to a referendum?
15. What are some of the major provisions the tribe would want included in legislation authorizing off-reservation casinos? Are any of these provisions non-negotiable?
16. How will the public transit and highway infrastructure be improved to accommodate the new casino and who will pay for it?
17. Under what circumstances, if any, would the tribes consider abandoning their quest to build an off-reservation casino in the state?
18. What is the labor situation at the two existing casinos? Are all employees unionized?
19. How much do the tribes contribute to compulsive gambling treatment and prevention programs in the state?

Questions for MGM Officials

1. How much did MGM pay for the Springfield casino license? What will be the tax rate on slot machine and table games?
2. An amendment to the 2017 National Defense Authorization Act would have prevented Indian tribes with casinos on tribal land from building off-reservation casinos in the same state. The provision, which did not pass, seemed to target the Mashantucket Pequots and Mohegans. What role, if any, did MGM play in getting this provision inserted in the legislation?
3. If MGM had a role in inserting the provision in the bill, how does one reconcile this action with MGM's claim that the company wants a fair and competitive process that allows all qualified bidders to compete? Would not such a law eliminate the Mashantucket Pequots and Mohegans from competing for an off-reservation casino in Connecticut?

4. We understand that the agreement concerning the Springfield casino limits how close to Springfield MGM can build another casino. Is this true? Does this mean that MGM could not build a casino in Windsor Locks or East Windsor even if state law changes and it wins a bid to build a Connecticut casino?
5. According to published reports, MGM redesigned the Springfield casino to cut retail, dining, and non-gambling space from the original design. Why the downsizing? What changed between the time the project was awarded and now?
6. From a business standpoint, it would seem that any commercial casino in Connecticut must be conditioned on the state getting more revenue than it would lose if it violates the MOU with the tribes. Can you describe any scenario in which MGM could guarantee the same level of revenue that the state currently gets from the tribes?
7. Massachusetts legalized casinos in 2011 (law passed Nov. 22, 2011), and the Springfield casino is still not finished. When will the casino open? What has been holding things up?
8. Why do you think MGM won the bid to build the Springfield casino? What do you think you were able to offer that your competitors could not?

Questions for State Gaming Officials

1. The Connecticut attorney general has indicated that the casino legislation ([SA 15-7](#)) may face third-party challenges on constitutional grounds and he cannot predict with any certainty how a court would resolve the issue. Given the degree of uncertainty and the amount of revenue at risk, how would you advise the state to proceed?
2. A casino in the I-91 corridor has been pitched as a good option for the state, but has any independent study been done of the entire region to show whether a casino located in a more populous location, such as Bridgeport, would be a better bet? What do you consider to be in the best interest of the state?
3. Do you think casino gambling is a good bet for Connecticut? How effective is gambling as a long-term strategy to raise revenue and create jobs?
4. Neither the state nor the municipalities cited as potential hosts for the proposed new casino has commissioned any independent studies to measure the benefits and costs to the municipalities. How do you respond to critics who say that such a study should be a prerequisite to authorizing and siting a casino?

5. How have casinos benefited their host municipalities? Do they make them financially stronger? Do they stimulate new investments and make the municipalities less dependent on state aid? Please document your response.
6. About 20 years ago, the National Impact Study Commission, which reviewed gambling regulation as part of an in-depth report to Congress, proposed a hiatus (break) in gambling expansion. In what ways, if any, do you believe the landscape has changed to make gambling expansion a sound policy decision today?
7. In pitching the casino proposal in Massachusetts, Governor Patrick said it would mitigate that state's loss of revenue to surrounding states, such as Connecticut and Rhode Island, which draw most of their customers from Massachusetts. Now Connecticut is pitching a casino to mitigate loss of Connecticut revenue to Massachusetts. Is this a sound basis on which to develop gambling policy? Instead of responding to what other states are doing, should the state instead focus on developing a proactive gambling strategy? What would you consider a proactive gambling strategy?
8. What role, if any, should governments play in protecting gambling enterprises from competition, whether from within their own state or from other states?
9. What are the public policy implications of allowing the funding of state government to become partially dependent upon gambling revenue?
10. State-authorized casino gambling represents a major shift in the state's anti-gambling policy. What are some of the likely consequences of this shift for the state?
11. How do you think casinos affect player participation in the state lottery? Are people more interested in lottery games because of gambling at the casinos, or is money that would otherwise be spent on the lottery diverted to the casinos?

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